

SOAH DOCKET NO. 582-07-2673
TCEQ DOCKET NO. 2007-0204-WDW
APPLICATION OF TEXCOM GULF) STATE OFFICE OF
DISPOSAL, LLC, FOR TEXAS)
COMMISSION ON ENVIRONMENTAL)
QUALITY UNDERGROUND INJECTION)
CONTROL PERMIT NOS. WDW410,)
WDW411, WDW412 AND WDW413) ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 582-07-2674
TCEQ DOCKET NO. 2007-0362-IHW
APPLICATION OF TEXCOM GULF) STATE OFFICE OF
DISPOSAL, LLC, FOR TEXAS)
COMMISSION ON ENVIRONMENTAL)
QUALITY INDUSTRIAL SOLID)
WASTE PERMIT NO. 87758) ADMINISTRATIVE HEARINGS

REMANDED HEARING ON THE MERITS
TUESDAY, JUNE 15, 2010

BE IT REMEMBERED THAT at 9:30 a.m., on
Tuesday, the 15th day of June 2010, the above-entitled
matter came on for hearing at the State Office of
Administrative Hearings, William P. Clements, Jr.,
Building, 300 West 15th Street, Room 404, Austin, Texas,
before THOMAS H. WALSTON AND CATHERINE C. EGAN,
ADMINISTRATIVE LAW JUDGES, and the following proceedings
were reported by Kim Pence and Lorrie A. Schnoor,
Certified Shorthand Reporters of:

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2	<p style="text-align: center;">A P P E A R A N C E S</p> <p>1 FOR TEXCOM GULF DISPOSAL, LLC: Mr. John A. Riley Mr. Patrick Lee Mr. Bryan J. Moore VINSON & ELKINS, LLP 2801 Via Fortuna, Suite 100 Austin, Texas 78746-7568 Telephone: 512.542.8729 - Fax: 512.236.3257 email: jriley@velaw.com email: plee@velaw.com email: bmoore@velaw.com</p> <p>FOR THE ALIGNED PROTESTANTS, CITY OF CONROE AND MONTGOMERY COUNTY: Mr. David K. Walker Ms. Sara Forlano Montgomery County Attorney's Office 207 West Phillips Conroe, Texas 77301 Telephone: 936.539.7828 - Fax: 936.760.6920 email: sforlano@mctx.org</p> <p>FOR THE INDIVIDUAL PROTESTANTS, NICKY E. DYER, FLORA HARRELL, EDGAR AND SHIRLEY HOAGLAND, JAMES A. LANGSTON, III, JAMES LANGSTON, LOIS NELSON, BRIAN RODEL, RICHARD WARD AND EDWIN ART WILSON: Mr. Kevin A. Forsberg 15949 Highway 105 W, Suite 59 Montgomery, Texas 77316 Telephone: 936.588.6626 - Fax: 936.588.6229 email: kevin.forsberg@law.net</p> <p>FOR DENBURY ONSHORE, LLC: Ms. Mary Simmons Mendoza Mr. Adam H. Sencenbaugh HAYNES AND BOONE, LLP 600 Congress Avenue, Suite 1300 Austin, Texas 78701 Telephone: 512.867.8418 - Fax: 512.867.8690 email: mary.mendoza@haynesboone.com email: adam.sencenbaugh@haynesboone.com</p>	4
3	<p style="text-align: center;">A P P E A R A N C E S (CONTINUED)</p> <p>FOR LONE STAR GROUNDWATER CONSERVATION DISTRICT: Mr. Jason Hill LLOYD, GOSSELINK, ROCHELLE & TOWNSEND, PC 816 Congress Avenue, Suite 1900 Austin, Texas 78701 Telephone: 512.322.5855 - Fax: 512.472-0532 email: jhill@glawfirm.com</p> <p>FOR THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY: Ms. Diane Goss Mr. Don Redmond Staff Attorneys, Environmental Law Division 12100 Park 35 Circle, Building A Post Office Box 13087 Austin, Texas 78711-3087 Telephone: 512.239.5731 - Fax: 512.239.0606 email: dgoss@tceq.state.tx.us dredmond@tceq.state.tx.us</p> <p>FOR THE OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY: Mr. Scott Humphrey 12100 Park 35 Circle, Building F Post Office Box 13087, MC-103 Austin, Texas 78711-3087 Telephone: 512.239.0574 - Fax: 512.239.6377 email: shumphre@tceq.state.tx.us</p>	5
2	<p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">TUESDAY, JUNE 15, 2010</p> <p style="text-align: center;">(9:30 a.m.)</p> <p>(Exhibit Denbury Nos. 1 through 21 marked)</p> <p>(Exhibit TexCom Nos. 84 through 93 marked)</p> <p>JUDGE WALSTON: Okay. We'll go on the 7 record. This is SOAH Docket No. 582-07-2673 and SOAH 8 Docket No. 582-07-2674; TCEQ Docket Nos. 2007-0204-WDW 9 and 2007-0362-IHW; The Application of TexCom Gulf 10 Disposal, LLC, for Underground Injection Control Permit 11 Nos. WDW410, 11, 12 and 13, and the Application of 12 TexCom Gulf Disposal, LLC, for an Industrial Solid Waste 13 Permit No. 87758.</p> <p>My name is Tom Walston. I'm an 15 Administrative Law Judge with the State Office of 16 Administrative Hearings, and I am co-presiding with 17 Cathy Egan. This is the remand hearing of this 18 proceeding, and today's date is June 15, 2010, and we're 19 starting at about 9:30. Even though the order set it 20 for 10:00 a.m., all the parties stated that they were 21 ready.</p> <p>And why don't we go ahead and take 23 appearances, and will the Applicant TexCom announce its 24 appearance?</p> <p>MR. RILEY: Certainly. For the applicant,</p>	4
3	<p>1 John Riley, Patrick Lee and Bryan Moore, who is new to 2 the case and seated two seats to my left.</p> <p>JUDGE WALSTON: Okay. Thank you. And for 4 Denbury?</p> <p>MS. MENDOZA: Mary Mendoza and Adam 6 Sencenbaugh.</p> <p>JUDGE WALSTON: For Lone Star Groundwater 8 Conservation District?</p> <p>MR. HILL: Jason Hill, Your Honors.</p> <p>JUDGE WALSTON: Okay. The individual 11 protestants?</p> <p>MR. FORSBERG: Kevin Forsberg, Your 13 Honors.</p> <p>JUDGE WALSTON: The aligned protestants?</p> <p>MR. WALKER: Your Honor, I'm David Walker 16 assisted by Sara Forlano representing Montgomery County 17 and the City of Conroe.</p> <p>JUDGE WALSTON: All right. The Public 19 Interest Counsel?</p> <p>MR. HUMPHREY: Scott Humphrey, Office of 21 Public Interest Counsel.</p> <p>JUDGE WALSTON: And for the Executive 23 Director?</p> <p>MS. GOSS: For the Executive Director, 25 Diane Goss and Don Redmond.</p>	5

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6	<p>1 JUDGE WALSTON: All right. And I'll just</p> <p>2 note that before we began the proceeding, we had a card</p> <p>3 from -- is it Brandon Creighton? Is Brandon Creighton</p> <p>4 here?</p> <p>5 MS. DEAN: I'm his chief of staff, sir.</p> <p>6 He is on his way.</p> <p>7 JUDGE WALSTON: Okay. And Angus Lupton?</p> <p>8 MR. LUPTON: Lupton, yes, sir.</p> <p>9 JUDGE WALSTON: Okay. And you're here on</p> <p>10 behalf of Senator Nichols?</p> <p>11 MR. LUPTON: Yes, sir.</p> <p>12 JUDGE WALSTON: All right. And I wasn't</p> <p>13 clear. Did either of you wish to make any type of</p> <p>14 statement before we proceed, or are you just noting your</p> <p>15 appearance?</p> <p>16 MR. LUPTON: If it's okay, I think</p> <p>17 Representative Creighton has a letter he'd like to enter</p> <p>18 into the record on behalf of himself and Senator</p> <p>19 Nichols. We have that and can provide that for you at</p> <p>20 this time, or if it's okay with you, wait until</p> <p>21 Representative Creighton is here.</p> <p>22 JUDGE WALSTON: That will be fine. We can</p> <p>23 wait until he gets here. I believe we have it. We</p> <p>24 received one in the mail, but we'll wait until he gets</p> <p>25 here.</p>	8
7	<p>1 Okay. We have --</p> <p>2 MR. RILEY: Well, we haven't seen it,</p> <p>3 Judge. With all due respect, I think we're entitled as</p> <p>4 a party. Thank you.</p> <p>5 JUDGE WALSTON: We have some preliminary</p> <p>6 matters to take up. There is a motion for a continuance</p> <p>7 filed by Denbury Onshore, LLC, and a plea to the</p> <p>8 jurisdiction for a motion to provide additional evidence</p> <p>9 also filed by Denbury.</p> <p>10 We had a question about Mr. Riley being</p> <p>11 out tomorrow afternoon, I guess, Mr. Humphrey, you're</p> <p>12 going to be out for a couple of days as well?</p> <p>13 MR. HUMPHREY: That's correct, Your Honor.</p> <p>14 JUDGE WALSTON: The first matter -- go</p> <p>15 ahead, Mr. Riley -- that we thought we would take up</p> <p>16 would be Denbury's motion for a continuance and --</p> <p>17 MR. RILEY: Just before we -- before we</p> <p>18 proceed, Judge, as it pertains to the letter, as the</p> <p>19 letter is not simply just comment, it actually comments</p> <p>20 on the evidence in this case. We think it's</p> <p>21 inappropriate, and we object to receipt of that letter</p> <p>22 into the record.</p> <p>23 JUDGE WALSTON: Okay. We'll wait until</p> <p>24 the representative gets here --</p> <p>25 MR. RILEY: Thank you.</p>	9
	<p>1 JUDGE WALSTON: -- and see if we wishes to</p> <p>2 do it. And we just received it this morning ourselves.</p> <p>3 MR. RILEY: I understand.</p> <p>4 MS. MENDOZA: Your Honor?</p> <p>5 JUDGE WALSTON: Yes?</p> <p>6 MS. MENDOZA: Mary Mendoza for Denbury</p> <p>7 Onshore. Given that we are challenging the SOAH</p> <p>8 jurisdiction at this moment, we respectfully request</p> <p>9 that we take up the plea to the jurisdiction first</p> <p>10 before we continue on with other matters if that --</p> <p>11 we're happy to take it in any order, but we think the</p> <p>12 plea to the jurisdiction may -- depending on the</p> <p>13 decision on that could decide whether we need to</p> <p>14 continue today or not.</p> <p>15 JUDGE WALSTON: Well, frankly, what I</p> <p>16 thought we would do is go ahead and just hear the</p> <p>17 argument on both of them, and we'd take a break and rule</p> <p>18 on both of them.</p> <p>19 MS. MENDOZA: Thank you.</p> <p>20 JUDGE WALSTON: So go ahead and proceed</p> <p>21 with the motion for continuance.</p> <p>22 MS. MENDOZA: Your Honor, thank you.</p> <p>23 Denbury has filed two motions, both of which raise</p> <p>24 serious matters about whether this hearing should</p> <p>25 proceed. One of those motions is a plea to the</p>	

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10	<p>1 conveying those mineral interests to TexCom.</p> <p>2 This is a serious matter in that this</p> <p>3 notice is jurisdictional for the hearing to proceed</p> <p>4 forward. It is the -- the water code requires this</p> <p>5 notice, and Section 27.018 of the water code says that</p> <p>6 before the parties should hear testimony, this notice of</p> <p>7 a hearing must be given to all the affected persons.</p> <p>8 The rules of the Texas Commission on</p> <p>9 Environmental Quality require that this notice be given</p> <p>10 to the mineral interest owner, and that notice has not</p> <p>11 been provided. There is no evidence in the record that</p> <p>12 Sabine Royalty Trust, the entity that owns these</p> <p>13 minerals, received any notice.</p> <p>14 The burden to demonstrate this is upon the</p> <p>15 applicant, and they have -- they have not demonstrated</p> <p>16 this. In fact, all of the evidence that is in the</p> <p>17 record does not list Sabine Royalty Trust as having</p> <p>18 received any notice of this matter.</p> <p>19 In addition, we do have -- we have also</p> <p>20 filed a motion for a continuance based upon recent</p> <p>21 actions taken by the Railroad Commission. We have</p> <p>22 provided to Your Honors and to all the parties and have</p> <p>23 filed in this case a motion to continue, and attached to</p> <p>24 that is a letter from the Executive Director of the</p> <p>25 Railroad Commission. And the Executive Director of the</p>	12	<p>1 they are very much a matter for -- about the</p> <p>2 jurisdiction of this -- of SOAH to continue this hearing</p> <p>3 and the TCEQ to hear this.</p> <p>4 In the alternative on the jurisdiction</p> <p>5 issue and the notice issue, we want to be able to</p> <p>6 introduce evidence about the failure of proper notice,</p> <p>7 and we have a witness here who did the deed record</p> <p>8 search who can testify in support of his affidavit and</p> <p>9 support of this motion if the parties desire to</p> <p>10 cross-examine on this issue.</p> <p>11 So basically we're requesting that you</p> <p>12 remand this hearing or continue it until such time as</p> <p>13 both of these matters can be addressed.</p> <p>14 JUDGE WALSTON: Okay. Thank you.</p> <p>15 MS. MENDOZA: Thank you.</p> <p>16 JUDGE WALSTON: Mr. Riley?</p> <p>17 MR. RILEY: Well, Judge, let me first</p> <p>18 explain the great disadvantage counsels' tactics have</p> <p>19 placed the applicant at. The motion, as you know, the</p> <p>20 first we've seen it was this morning at approximately --</p> <p>21 I'll guess 20 minutes ago, and there's 14 pages of</p> <p>22 motion and some attachments that we've had only moments</p> <p>23 to look at.</p> <p>24 That said, I do not believe Ms. Mendoza --</p> <p>25 as many times as she says the words "serious, and these</p>
11	<p>1 Railroad Commission has indicated that they will be</p> <p>2 setting for hearing a determination of whether the</p> <p>3 applicant's letter, which is required of the applicant,</p> <p>4 whether that letter should be rescinded. That letter is</p> <p>5 necessary for this matter to go forward. The water code</p> <p>6 makes clear that the hearing on the application cannot</p> <p>7 proceed until that letter is received. The Railroad</p> <p>8 Commission is now engaged in a contested case hearing or</p> <p>9 will be engaged in a contested case hearing to determine</p> <p>10 whether that letter should be rescinded.</p> <p>11 And in the interest of judicial economy,</p> <p>12 we believe that this hearing should be continued, and</p> <p>13 the TCEQ should defer to the Railroad Commission's</p> <p>14 jurisdiction over this matter as the water code</p> <p>15 indicates should be done so that we do not spend a</p> <p>16 substantial amount of time in a hearing only to have the</p> <p>17 Railroad Commission make a determination that would have</p> <p>18 made that entire hearing moot.</p> <p>19 And we ask that you continue this matter</p> <p>20 until after the -- if you do not grant the plea to the</p> <p>21 jurisdiction, we ask that you continue this matter until</p> <p>22 we conclude the Railroad Commission hearing on this --</p> <p>23 on the letter that they are required to have in order to</p> <p>24 process their application.</p> <p>25 Both of these are serious matters, and</p>	13	<p>1 are serious matters," I think we have to keep in mind</p> <p>2 primarily this is a remand hearing, that threshold</p> <p>3 matters -- we passed those thresholds sometime in at</p> <p>4 least 2007, to the best to my recollection, and have</p> <p>5 already had a hearing on this matter where many issues</p> <p>6 have been discussed and many issues, in my opinion, have</p> <p>7 been decided by the Commission. We were remanded for</p> <p>8 certain limited evidence and limited issue, as you've</p> <p>9 noted in your order, allowing Denbury into this case.</p> <p>10 Certainly the allegation that the -- that</p> <p>11 Denbury is advocating on behalf of some other mineral</p> <p>12 interest owner at the outset, I think, is inappropriate.</p> <p>13 And it's my understanding and it really is -- since I've</p> <p>14 had no time to research, it is my understanding the TCEQ</p> <p>15 has determined that other parties may not advocate and</p> <p>16 may not represent other interests and make the claims</p> <p>17 that Denbury is claiming in this case.</p> <p>18 Without any -- without the benefit of</p> <p>19 research time, I can't cite you anything, but it's my</p> <p>20 understanding that the TCEQ Commissioners and their</p> <p>21 precedent have indicated that this is not an appropriate</p> <p>22 motion for Denbury to bring. It may be appropriate for</p> <p>23 someone else, but we even dispute that without having</p> <p>24 any time to look at the supporting documentation.</p> <p>25 So as it pertains to the plea to</p>

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<p style="text-align: right;">14</p> <p>1 jurisdiction, there's a third element that I think we 2 could offer at this point, which is that the 3 jurisdiction, as I said, has been taken in this case. 4 You have jurisdiction, and there is no notice that's 5 been required for this continued hearing. To the extent 6 that there has been any notice requirement, it was for 7 the threshold we crossed some years ago.</p> <p>8 The provision cited by counsel of the 9 water code as it pertains to the requirements of 28 -- 10 excuse me -- 27.018(c) says before the Commission begins 11 to hear testimony in a contested case, and then goes on. 12 It talks about notice to affected persons. There is no 13 evidence that the person, Sabine Trust, is an affected 14 person. They may be a mineral interest owner, but the 15 statute refers to affected persons, which in my mind and 16 I suggest the statute, is a higher requirement or a 17 higher burden than what Ms. Mendoza has said.</p> <p>18 If you'll just give me a second -- 19 JUDGE WALSTON: Sure.</p> <p>20 MR. RILEY: -- to make sure I've covered, 21 the best I can, what I've been able to cobble together 22 in the last 15 minutes.</p> <p>23 We fundamentally disagree that the 24 allegations of this motion or plea to the jurisdiction 25 raises a jurisdictional issue. We disagree with that.</p>	<p style="text-align: right;">16</p> <p>1 sentence it says, "other issues such as whether TexCom's 2 injection activities would negatively affect or impair 3 Denbury's mineral rights or whether the location of the 4 proposed injection well is geologically suitable are 5 beyond the scope of this remand hearing."</p> <p>6 Despite your caution to Denbury, despite 7 what I recall of the colloquy at the prehearing 8 conference, Denbury has done nothing but try to promote 9 the notion that mineral interests are still an issue in 10 this hearing. They have filed testimony, which we 11 objected to, and of course Your Honors overruled us 12 because of a -- I believe because of a sliver, I 13 suppose, of a hook for Denbury to claim that the waste 14 injected by TexCom could be produced and, therefore, it 15 would not be permanently stored in the lower Cockfield 16 Formation.</p> <p>17 And I don't want to be too presumptuous, 18 but I believe that's the basis of your ruling, given 19 what I've seen of your prior order, that mineral 20 interests was not an issue. It seems that was the hook 21 that allowed Denbury to put in what is clearly mineral 22 interest testimony, if looked at from our perspective or 23 even a little differently from a different angle.</p> <p>24 What Denbury has done, oh, for months now 25 is lobbied the Railroad Commission. I use that word not</p>
<p style="text-align: right;">15</p> <p>1 We have done some research this morning. I believe that 2 the Supreme Court has recently ruled, as it pertains to 3 administrative cases, that jurisdiction is something 4 that the legislature must specify specifically, and that 5 there would be -- if notice were jurisdictional in this 6 case, then that would have to be expressed in the 7 statute.</p> <p>8 And so since those words are not used in 9 the statute, we don't think current case law or recent 10 case law supports the notion that this is a plea to the 11 jurisdiction. So then what is it? It's a motion for 12 summary disposition on an issue that is no longer before 13 Your Honors, an issue that could have been raised at 14 some point potentially, may have even been raised 20 15 days ago as the rules require. But this is not a 16 motion -- this is not a plea to the jurisdiction. It's 17 a motion for summary disposition. As a motion for 18 summary disposition, it is untimely and simply should 19 not be considered at this point.</p> <p>20 As it pertains to the motion for a 21 continuance, it is remarkable to me -- and I'll quote 22 you from your order, which I'm sure it's not necessary 23 to quote you -- but on Page 2 of the order allowing 24 Denbury to intervene in this case in the third full 25 paragraph -- excuse me -- the third full paragraph, last</p>	<p style="text-align: right;">17</p> <p>1 cautiously at all. They have sent their lobbyist, a 2 fellow by the name of Michael Jewell, to meet with the 3 Commissioners of the Railroad Commission. They have met 4 with the Executive Director of the Railroad Commission 5 on numerous occasions. They've met with technical staff 6 on numerous occasions. They have pushed the Railroad 7 Commission to reverse its original letter, which by the 8 way is not the only time the Railroad Commission has 9 opined on the lack of harm to mineral interests. They 10 did that originally in the Crossroads application.</p> <p>11 So the Railroad Commission has reviewed 12 the information at least twice and has reached the same 13 conclusion, which is that the TexCom well or the TexCom 14 proposal does not threaten or does not -- will not harm 15 mineral interests.</p> <p>16 Despite all that and despite the fact the 17 Railroad Commission has reached that conclusion, and 18 that was most recently in 2005, Denbury has advocated 19 vigorously in front of the Railroad Commission for the 20 Railroad Commission to withdraw that letter and do 21 something different.</p> <p>22 The best that they've been able to achieve 23 in the months of trying is for the Railroad Commission 24 to treat their technical submittals, all their lobbying 25 efforts, as a complaint, which I'm confident the</p>

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<p style="text-align: right;">18</p> <p>1 Railroad Commission has done that because their statutes 2 obligate them to do so. And so they've got -- no 3 decision is made. It's not indicative of anything. All 4 the Railroad Commission has said is, "We can't ignore 5 you, apparently. You won't go away, so we'll give you 6 some process," and that remains to be seen what that -- 7 what that amounts to.</p> <p>8 It has no relationship to the case before 9 you for two reasons: One is that the statute related to 10 the Railroad Commission letter, the letter that is 11 necessary to get in the doorway, so to speak, is a 12 threshold requirement. If we look at 27.015, noticeably 13 absent from counsels' papers is Section (c), but I'll 14 come to that in a minute.</p> <p>15 As you'll see in Section (a), an 16 applicant -- I'll call it can't get in the door without 17 a letter from the Railroad Commission indicating that 18 there will be no harm to mineral interest. We've 19 crossed that threshold. We crossed it years ago. It 20 seems as though there's the possibility that someone 21 might get through that threshold, and that's what's 22 contemplated in Section (b), someone could get over the 23 threshold and make their way toward a public hearing. 24 And at that time, there's another check in the system, 25 so to speak, or the statute speaks to having a letter</p>	<p style="text-align: right;">20</p> <p>1 It doesn't change that the TCEQ, through the point in 2 time where the TCEQ has control of the case and can make 3 the determination, up to and including harm to mineral 4 interests and whether -- even if the Railroad Commission 5 says there will be harm, the TCEQ may decide that 6 there's not. That's clear in the statute. The TCEQ 7 only is bound to the Railroad Commission decision if the 8 Railroad Commission decision is no harm. They are not 9 bound if the Railroad Commission were to opine, through 10 some mechanism, that there will be harm, and I think 11 that's really very clear in the statute.</p> <p>12 All that said, we know nothing about this 13 Railroad Commission proceeding. We know nothing about 14 the length of time it will take. And as I said, it has 15 little or no relevance to the proceeding before you, 16 given that the threshold requirement has been satisfied 17 or we wouldn't be sitting here this morning.</p> <p>18 As I mentioned in our preliminary 19 hearing -- and it's not as though I have a crystal ball. 20 It was fairly predictable -- that admission of Denbury 21 at this late stage in the proceeding would be 22 disruptive, would open a can of worms, and sure enough 23 that's where we are.</p> <p>24 Now, as I said, I find the tactics to be 25 distasteful, but I guess that's what lawyers do.</p>
<p style="text-align: right;">19</p> <p>1 from the Railroad Commission indicating no harm before 2 any testimony can be taken in a case. We've crossed 3 that threshold.</p> <p>4 I think the reason we cannot -- or a 5 reason we know that these are threshold requirements 6 other than the plain language of the statute is what 7 happens with Section (c). And in Section (c), it says, 8 that "The Commission," meaning the TCEQ, "can't make a 9 finding contrary to the Railroad Commission about harm 10 to mineral interests if that letter exists."</p> <p>11 So the suggestion there is -- as we know 12 from our general rules of statutory construction, we 13 must give meaning to each section of the statute. 14 Section (c) says if you've crossed the threshold and 15 there's something that changes and mineral interests now 16 becomes an issue, then the Commission -- it is the TCEQ 17 Commissioners' responsibility to make the decision. 18 It's the only way the statute works. In other words, 19 you have to give meaning to Section (c).</p> <p>20 And presumably if Section (a) means what 21 it means, Section (b) means what it means, the only 22 reason you would get to Section (c) is if somehow 23 something changes, perhaps as Ms. Mendoza and her team 24 has vigorously advocated before the Railroad Commission, 25 the Railroad Commission would have changed its position.</p>	<p style="text-align: right;">21</p> <p>1 The reality is that Denbury has one 2 objective in this case, one objective this morning, and 3 that's to prevent this hearing from going forward 4 because it will give it more opportunity to advance its 5 interests outside of this forum, outside of the TCEQ, 6 which is contrary to the notion of TCEQ having 7 jurisdiction, having sent us back for a limited remand, 8 and I assume some time expecting us to return with this 9 case back to the Commission. Thank you.</p> <p>10 JUDGE WALSTON: Does the Executive 11 Director wish to weigh in?</p> <p>12 MS. GOSS: Yes. Thank you. Okay. First, 13 to address the notice issue, the Executive Director was 14 served with the motion at 9:20 this morning. 15 Certificate of conference states that the substance of 16 the motion was communicated to the Executive Director. 17 That was true at 2:30 yesterday. Don Redmond and I had 18 a brief conversation with Mary Mendoza and -- but we did 19 not see a pleading, and we did not have the benefit of 20 looking at this until this morning.</p> <p>21 We have not had an opportunity to fully 22 develop the legal theory and the facts surrounding this 23 motion, but we would certainly request that Your Honors 24 would provide an opportunity for the Executive Director 25 to review the motion and to brief the issues before you</p>

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<p style="text-align: right;">22</p> <p>1 rule favorably on it.</p> <p>2 That said, the Executive Director does not</p> <p>3 believe that Denbury has -- has failed in notice because</p> <p>4 Denbury has effective notice because Denbury is here</p> <p>5 participating at the uber level of public participation</p> <p>6 in a permitting matter, and Denbury has not objected to</p> <p>7 notice previously.</p> <p>8 The Executive Director also does not</p> <p>9 believe that a party can protest lack of notice on</p> <p>10 behalf of another person who is not present, and Mary</p> <p>11 Mendoza told us yesterday at the time she didn't know</p> <p>12 who the mineral -- who the alleged mineral interest</p> <p>13 owner might be, but she did state that she didn't</p> <p>14 represent that person.</p> <p>15 And additionally, the notice and</p> <p>16 jurisdictional documents that were admitted in this case</p> <p>17 without objection in the first iteration of this</p> <p>18 hearing, and this remand proceeding is limited to the</p> <p>19 issues that were remanded by the Commission to address</p> <p>20 specific issues. And for those reasons, on the notice</p> <p>21 issue, the Executive Director would object to a</p> <p>22 continuance on this basis and would recommend that the</p> <p>23 Executive Director and the other parties have an</p> <p>24 opportunity to brief it before Your Honors would rule</p> <p>25 favorably on it.</p>	<p style="text-align: right;">24</p> <p>1 Railroad Commission, TexCom, Wapiti or the persons</p> <p>2 responsible for Denbury's due diligence investigation,</p> <p>3 and we don't believe that that venue is here in this</p> <p>4 proceeding.</p> <p>5 Additionally, Denbury misconstrues, from</p> <p>6 our perspective of the water code, Section 27.015(b).</p> <p>7 The Railroad Commission letter is in our record. It was</p> <p>8 admitted after opportunity for objection. No</p> <p>9 allegations impugning the authenticity of the document</p> <p>10 have been raised. And the June 14th letter -- the</p> <p>11 June 14th fax yesterday from the Railroad Commission</p> <p>12 stating that the Railroad Commission is going to open a</p> <p>13 hearing does not revoke the previous letter.</p> <p>14 And with all due respect, the Executive</p> <p>15 Director cannot speak for the Railroad Commission, but</p> <p>16 certainly does have a different interpretation of final</p> <p>17 action than represented in Denbury's brief. In this</p> <p>18 case, the timing -- there are leagues of regulated</p> <p>19 entities under the Railroad Commission's jurisdiction</p> <p>20 who are relying on final agency actions that were done</p> <p>21 at a staff level that would not find comfort in an</p> <p>22 interpretation that a final agency action at a staff</p> <p>23 level is not binding. And so the Executive Director</p> <p>24 does not agree with that interpretation.</p> <p>25 In closing, the Executive Director</p>
<p style="text-align: right;">23</p> <p>1 In terms of the continuance, the Executive</p> <p>2 Director objects to the motion for continuance. This</p> <p>3 is, again, a remand hearing to address specific issues</p> <p>4 that were identified by the Commission in the remand</p> <p>5 order. The Commission did not direct Your Honors to</p> <p>6 consider additional evidence on impairment of mineral</p> <p>7 interests, and you previously ruled that Denbury's</p> <p>8 participation was not for the purpose of addressing</p> <p>9 mineral interests.</p> <p>10 Now, we have this letter from the Railroad</p> <p>11 Commission from September 2005 that was admitted into</p> <p>12 evidence without objection. We have not heard anything</p> <p>13 from our sister agency, the Railroad Commission, that</p> <p>14 would rescind that letter. That letter is in the record</p> <p>15 and it stands. We believe the motion for continuance</p> <p>16 mischaracterizes the letter, and we would -- we would</p> <p>17 like to point out to Your Honors that the facts or the</p> <p>18 letter from the Railroad Commission yesterday states</p> <p>19 simply that the Railroad Commission is going to open a</p> <p>20 hearing. They called it a complaint hearing -- we don't</p> <p>21 know what that means -- on this issue for -- to revisit</p> <p>22 whether or not mineral interests might be impaired or</p> <p>23 harmed by the application of TexCom.</p> <p>24 We believe that Denbury has other legal</p> <p>25 remedies if they are harmed by the actions of the</p>	<p style="text-align: right;">25</p> <p>1 believes that talking about judicial economy and also</p> <p>2 the economy to the parties, not to just overstate it,</p> <p>3 but the Commission remanded specific issues. There has</p> <p>4 been ample time that all the parties present have</p> <p>5 participated in developing the evidence for the remand</p> <p>6 hearing on these issues. All the parties are present</p> <p>7 and ready to proceed. And the Executive Director's</p> <p>8 staff has fully prepared and budgeted the time and</p> <p>9 resources and is prepared to proceed. That's all we</p> <p>10 have.</p> <p>11 JUDGE WALSTON: Thank you, and I'll</p> <p>12 give -- do other parties -- any other parties wish to</p> <p>13 weigh in?</p> <p>14 MR. FORSBERG: Yes, Your Honors.</p> <p>15 JUDGE WALSTON: Okay. Go ahead.</p> <p>16 MR. FORSBERG: Your Honor, Kevin Forsberg</p> <p>17 for the individual applicants (sic). I'd like to,</p> <p>18 first, for the record, say that the individual</p> <p>19 applicants -- or individual protestants -- excuse me --</p> <p>20 join both of Denbury's motions about the motion to</p> <p>21 continue and the motion to plea of jurisdiction.</p> <p>22 With all due respect to the Executive</p> <p>23 Director, the statement that all parties are ready to</p> <p>24 proceed seems a little bit inaccurate at this point</p> <p>25 based upon these motions.</p>

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26	<p>1 Denbury -- I mean, TexCom in its</p> <p>2 application -- and we have always relied upon the</p> <p>3 fact -- stated that it was the owner of the mineral</p> <p>4 interests. We had no reason, I guess, to assume that</p> <p>5 that was a misstatement or that they misremembered or</p> <p>6 something with regards to that very threshold issue, and</p> <p>7 yet here we are at the hearing now finding out that</p> <p>8 Denbury -- sorry, excuse me -- TexCom doesn't even own</p> <p>9 the mineral rights.</p> <p>10 And with all due respect to Mr. Riley,</p> <p>11 saying that that is potentially not an affected party</p> <p>12 and that that's not an important issue just seems</p> <p>13 incredible to me because it's supposed to all point back</p> <p>14 to the application, and the application is now based</p> <p>15 upon just a flat out statement that they are the mineral</p> <p>16 rights owners, and they are not.</p> <p>17 Clearly, you know, if there's a</p> <p>18 representation that they are the mineral rights owner,</p> <p>19 how is the nonmineral rights owner -- I mean, this</p> <p>20 Sabine -- this purported owner of the mineral rights,</p> <p>21 Sabine Royalty Trust, how are they supposed to even</p> <p>22 protect themselves if they have no notice of the</p> <p>23 hearing. So I think it's a bit disingenuous not to</p> <p>24 mention the comment about tactics of lawyers in regards</p> <p>25 to this. To me the tactic that is very concerning is,</p>	28	<p>1 home, I'll show you my deed.</p> <p>2 I think it would be improper to proceed</p> <p>3 today with this kind of issue unresolved. I think it's</p> <p>4 a timely filed motion in that respect on an issue that</p> <p>5 is important to the application, and it matters not</p> <p>6 whether the mineral owner is here and represented. This</p> <p>7 is a proponent -- a component of the application that is</p> <p>8 now called into serious question, and it is the</p> <p>9 applicant's duty to resolve that question. Good</p> <p>10 government says let's resolve that question. We have</p> <p>11 representatives of the government here showing interest</p> <p>12 that this proceeding provide good government.</p> <p>13 I join -- in representing the city of</p> <p>14 Conroe and Montgomery County with the permission of</p> <p>15 representatives for Denbury, we join in the motion</p> <p>16 challenging the jurisdiction.</p> <p>17 On the motion for continuance, let me</p> <p>18 point out that the letter issued by the Railroad</p> <p>19 Commission dated June the 14th refers to the scheduling</p> <p>20 of a contested hearing on the issue of the rescission,</p> <p>21 the taking back of the letter issued to TexCom back in</p> <p>22 2005, I believe it was.</p> <p>23 Now, I believe it is inaccurate to suggest</p> <p>24 that this matter that the Railroad Commission is going</p> <p>25 to take up is something that we are uncertain about. We</p>
27	<p>1 again, the application, which is just flat out making a</p> <p>2 false statement on its face with regards to who owns the</p> <p>3 property that's affected here.</p> <p>4 To that extent, the individual</p> <p>5 protestants, again, join the motion because I think this</p> <p>6 is an issue that needs to be determined. I don't think</p> <p>7 jurisdiction can be waived. So the jurisdictional issue</p> <p>8 doesn't go away even if the Court doesn't accept it. I</p> <p>9 mean, it could still be an issue later. I think this is</p> <p>10 an issue that, you know, further on down the chain, you</p> <p>11 know, that evidence would be helpful to make a final</p> <p>12 decision later on.</p> <p>13 So with regards to that, that's all I</p> <p>14 have, Your Honor.</p> <p>15 JUDGE WALSTON: Okay. Mr. Walker?</p> <p>16 MR. WALKER: Yes, Your Honor. Thank you,</p> <p>17 Judge Walston, Judge Egan. On the filing of the motion</p> <p>18 challenging the jurisdiction, the plea to the</p> <p>19 jurisdiction, it appears to me that this motion is</p> <p>20 fundamental to whether or not we proceed today. It is a</p> <p>21 motion that has brought to the attention of Your Honors</p> <p>22 the apparent fact that a fundamental issue in the</p> <p>23 application is not as represented.</p> <p>24 Now, that fact, if you will, or that issue</p> <p>25 can be corrected. If someone questions whether I own my</p>	29	<p>1 don't know what they intend to take up. They intend to</p> <p>2 take up in potentially a hotly contested hearing whether</p> <p>3 or not that letter, again, a fundamental part of the</p> <p>4 application, should be withdrawn by the Railroad</p> <p>5 Commission, and that letter is signed by their Executive</p> <p>6 Director.</p> <p>7 Both of these motions today are</p> <p>8 fundamental to whether or not this proceeding should go</p> <p>9 forward today. There's been some comment about judicial</p> <p>10 economy, the economics of the parties. I agree that</p> <p>11 judicial economy would suggest that we not go forward in</p> <p>12 several days of contested hearing only to have that</p> <p>13 effort wiped out later by a decision of the Railroad</p> <p>14 Commission. That doesn't make good sense. And again, I</p> <p>15 don't think that's good government.</p> <p>16 The other issue is the economics of the</p> <p>17 parties. There are parties here from Montgomery County</p> <p>18 at expense to themselves who are relying upon Judge</p> <p>19 Walston, Judge Egan, to conduct this hearing, these</p> <p>20 matters, in a way that does not waste not only your time</p> <p>21 but the time of the parties. And I think to resolve</p> <p>22 these issues that have been raised by the motions filed</p> <p>23 today by Denbury must be done. Those issues must be</p> <p>24 resolved satisfactorily before your time and our time is</p> <p>25 wasted and before the parties are put through more</p>

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30	<p>1 effort and time than they should perhaps not be put 2 through. I, with great energy, support the motions 3 filed by Denbury.</p> <p>4 JUDGE WALSTON: Thank you. Did Lone Star 5 wish to --</p> <p>6 MR. HILL: Yes. Thank you, Your Honor.</p> <p>7 The district, like Mr. Forsberg's clients and the city 8 and county, will join both motions. The district is 9 particularly sensitive to the issue of notice. Lone 10 Star Groundwater Conservation District didn't receive 11 notice of the jurisdictional hearing of this case and 12 only found out about it maybe hours or a day before by a 13 wayward call from a newspaper reporter suggesting 14 that -- asking for comment of the district's interest in 15 this particular application.</p> <p>16 So we feel like we and all the other 17 protestants to this case have had a substantive, 18 positive impact in the development of the record in this 19 case. And to suggest that the absence of someone else 20 who is potentially an affected person has no bearing in 21 the outcome of this case, I think, is unfortunate. 22 Because clearly if someone has a justiciable interest 23 that is entitled to notice, they have due process rights 24 that this process was intended to respect and afford 25 them the opportunity to assert their interests and their</p>	32	<p>1 easy answer is to look around this room and see a ton of 2 interested faces and folks who are obviously prepared to 3 go forward with this hearing, lots of boxes of material 4 and lots of effort to get into this room this morning, 5 the easy answer would be to say that we're all here. 6 Let's just go forward.</p> <p>7 But it seems to me the right answer is to 8 suggest that we wait to see how this issue plays out at 9 the Railroad Commission, to have a better understanding 10 of what the scope of this hearing or whether or not the 11 hearing is mooted, whether the scope of this hearing -- 12 what the scope of this hearing is going to look like. 13 And that concludes my argument.</p> <p>14 JUDGE WALSTON: Thank you. Ms. Mendoza, 15 do you wish to make a response?</p> <p>16 MR. HUMPHREY: Your Honor?</p> <p>17 JUDGE WALSTON: Oh, I'm sorry, 18 Mr. Humphrey.</p> <p>19 MR. HUMPHREY: Thank you. I appreciate 20 it. OPIC also supports the motions as well. I agree 21 with Mr. Forsberg that jurisdiction remains a live 22 issue, and I think that Denbury has presented evidence 23 to you today that calls into question whether you could 24 have or should have taken jurisdiction of this case in 25 the first place. And OPIC believes that that's an issue</p>
31	<p>1 positions.</p> <p>2 With respect to the issue of the Railroad 3 Commission letter, I don't want to belabor this issue 4 any more than has already been addressed here, except to 5 say that regardless of whether we agree on how this 6 question is presently perched at the Railroad 7 Commission, it seems to me the resolution of the 8 question one way or the other about whether or not to 9 rescind this September 2005 letter has a -- the 10 potential at least to have a substantive impact on the 11 direction of this case.</p> <p>12 There is at least an argument, and I think 13 it's a good argument to suggest, that if the Railroad 14 Commission rescinds the letter, there's a question about 15 whether or not TexCom could have authorization to inject 16 when the Railroad Commission has determined that the 17 injection would impair mineral interest rights.</p> <p>18 On the other hand, if the Railroad 19 Commission determines to not rescind the letter and, in 20 fact, reinforces its position that apparently is 21 reflected in the 2005 letter, it seems to suggest 22 perhaps Denbury's interests have been substantively 23 addressed at the Railroad Commission and, therefore, the 24 scope of this hearing changes as a result.</p> <p>25 It seems in all prudence -- and I know the</p>	33	<p>1 that really does need to be resolved before we continue 2 in this case.</p> <p>3 I also agree with Mr. Walker's statement 4 that the letter that's the subject of the Railroad 5 Commission hearing is fundamental to this application, 6 and the disposition of that case has such an impact on 7 this one that we should continue in this matter as well 8 and, therefore, we do support both motions. Thank you.</p> <p>9 JUDGE WALSTON: Ms. Mendoza?</p> <p>10 MS. MENDOZA: Yes, thank you. I do want 11 to address a few things. I do want to note that the 12 Railroad Commission letter is more than just a 13 procedural item. It is a matter of substance. The 14 water code makes that clear that that is a matter of 15 substance, and it is a matter of substance upon which 16 the Railroad Commission has expertise, which the water 17 code indicates that we should defer to that expertise, 18 and the Railroad Commission has now indicated that they 19 are going to take up this matter. This is not a 20 resolved matter.</p> <p>21 The Railroad Commission letter could be 22 final, but certainly not if there is evidence that the 23 Railroad Commission is actively considering that letter 24 in a hearing mode at a higher-than-staff level, and that 25 is what we have here. This is -- it is being</p>

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<p style="text-align: right;">34</p> <p>1 reconsidered. It is not a final determination of the</p> <p>2 Railroad Commission that is needed to go forward in this</p> <p>3 hearing.</p> <p>4 I do want to note that Mr. Riley cited to</p> <p>5 Section 27.015(c), and I believe given when this</p> <p>6 application was declared to be administrative complete,</p> <p>7 that is not applicable this application based upon the</p> <p>8 notes of the adoption of that portion of the water code.</p> <p>9 JUDGE WALSTON: Say that again. I'm not</p> <p>10 sure I followed what you just said.</p> <p>11 MS. MENDOZA: At the time that the</p> <p>12 27.015(c) was adopted, I believe that the acts of the</p> <p>13 legislature said that 27.015(c) will only be applicable</p> <p>14 to applications before the Texas Water Commission or the</p> <p>15 Texas Natural Resource Conservation Commission which is</p> <p>16 pending on the effective date of this act. The</p> <p>17 effective date of that act, I believe, was June 18,</p> <p>18 1993.</p> <p>19 MR. RILEY: And 1993 seems to be well</p> <p>20 before this application was filed, but maybe I'm just</p> <p>21 lost.</p> <p>22 MS. MENDOZA: Yes. But I'm saying what it</p> <p>23 is saying is he has talked about (a) and (b) and then</p> <p>24 about how (c) is applicable to this application. (c) is</p> <p>25 only applicable to those applications that are pending</p>	<p style="text-align: right;">36</p> <p>1 notices are jurisdictional. This was the basis for the</p> <p>2 jurisdiction that this -- that SOAH accepted, and as</p> <p>3 such, we should not be continuing forward.</p> <p>4 It is the purpose of the contested case</p> <p>5 hearing to afford all parties the opportunity to present</p> <p>6 evidence and arguments on all issues required to be</p> <p>7 considered to assist the agency in making the best</p> <p>8 possible determination. And it is appropriate for</p> <p>9 Denbury or, in fact, for any other party to raise at any</p> <p>10 time the fundamental issue of whether the required</p> <p>11 notice was properly provided to the parties.</p> <p>12 It is absolutely clear under the TCEQ</p> <p>13 rules under Section 39 point -- I'll have to find my</p> <p>14 citation -- 651(f)(3) that "The persons who own the</p> <p>15 mineral rights underlying the existing or proposed</p> <p>16 injection well facility are entitled to mailed notice of</p> <p>17 the hearing." And there is no evidence that Sabine</p> <p>18 Royalty Trust received the mailed notice of the hearing.</p> <p>19 Their interests are not represented here by any party.</p> <p>20 Denbury is situated differently from that</p> <p>21 party. Denbury is -- we cannot represent them. We do</p> <p>22 not represent them. And for all of us to go forward on</p> <p>23 a hearing where there is a fundamental error that we now</p> <p>24 know about, we should not go forward on this hearing.</p> <p>25 There is a way to fix this. We can get this fixed and</p>
<p style="text-align: right;">35</p> <p>1 as of the effective date of the act. So 27.015(c) would</p> <p>2 not be applicable.</p> <p>3 JUDGE WALSTON: I think you -- let her</p> <p>4 finish her responses.</p> <p>5 MR. RILEY: Sure. I apologize.</p> <p>6 MS. MENDOZA: And it may be -- I don't</p> <p>7 know that the version that you're looking at has the</p> <p>8 notes from the historical and statutory notes in it, but</p> <p>9 that is what the historical and statutory notes</p> <p>10 indicate.</p> <p>11 I do want to say that if the well -- if</p> <p>12 the Railroad Commission determines that this well will</p> <p>13 cause harm, the permit should not even be considered,</p> <p>14 let alone issued. So this is fundamental to this</p> <p>15 hearing and fundamental to the decisions.</p> <p>16 On the jurisdictional issues, it is</p> <p>17 standard practice that these notices are jurisdictional.</p> <p>18 In fact, I believe the Public Interest Counsel has</p> <p>19 talked about that. I believe the Executive Director</p> <p>20 did, but I will allow them to speak for themselves.</p> <p>21 The Judges in the first hearing on this in</p> <p>22 going back and looking at the transcript of that</p> <p>23 hearing, it appears that these matters were things that</p> <p>24 were taken up and that were entered into the record</p> <p>25 before the Judges accepted jurisdiction. So these</p>	<p style="text-align: right;">37</p> <p>1 then proceed forward with a hearing that would -- that</p> <p>2 would be properly noticed.</p> <p>3 If you will just give me a moment.</p> <p>4 The one last thing that I want to say</p> <p>5 about the Railroad Commission letter is, you know, the</p> <p>6 Railroad Commission has the authority to consider this.</p> <p>7 They are considering this, and perhaps had notice been</p> <p>8 properly given and a mineral interest owner had been</p> <p>9 notified, this issue before the Railroad Commission</p> <p>10 would have come up a long time ago and been long since</p> <p>11 resolved.</p> <p>12 We don't know where that mineral interest</p> <p>13 would have chosen to assert interests. We don't know</p> <p>14 what kind of interests they have. They could have come</p> <p>15 here and intervened as a party as they were entitled to</p> <p>16 do. They could have gone to the Railroad Commission and</p> <p>17 informed the Railroad Commission that, in fact, TexCom</p> <p>18 does not own the mineral interests on that property. We</p> <p>19 simply don't know that. The Railroad Commission is now</p> <p>20 going to get to take that up.</p> <p>21 We have -- we put the parties on notice</p> <p>22 about this, and we have put now the Judges on notice</p> <p>23 about what we believe to be a fundamental issue in the</p> <p>24 jurisdiction to continue forward with the hearing today,</p> <p>25 and we would ask that you grant our motions and allow</p>

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39	<p>1 this matter. We know it won't. We trust you that it</p> <p>2 won't, but it's clearly being done for a purpose and the</p> <p>3 purpose is to influence your decision.</p> <p>4 JUDGE WALSTON: All right. I understand</p> <p>5 your objection, but out of courtesy to the</p> <p>6 Representative, I'll allow him to make his comment.</p> <p>7 PUBLIC COMMENT</p> <p>8 REP. CREIGHTON: Thank you. Judge</p> <p>9 Walston, Judge Egan, thank you for allowing me to make a</p> <p>10 few brief comments.</p> <p>11 I first want to say I'm certainly not here</p> <p>12 for garnering votes or making headlines. I'm here to</p> <p>13 make brief remarks for constituents that Senator Robert</p> <p>14 Nichols and myself both represent in Montgomery County</p> <p>15 that have high emotions and grave concerns over the</p> <p>16 future of our long-term sustainable water supply and</p> <p>17 our -- obviously our natural resources, our oil and gas</p> <p>18 interests.</p> <p>19 As legislators representing Montgomery</p> <p>20 County, we're unequivocally opposed to TexCom's</p> <p>21 application to operate an underground injection control</p> <p>22 well in Montgomery County. In addition to the</p> <p>23 overwhelming opposition demonstrating -- to be</p> <p>24 demonstrated by resolutions from local government</p> <p>25 entities and private individuals, we believe the</p>	41	<p>1 regarding today's proceedings until the Railroad</p> <p>2 Commission has addressed the issue in their hearings</p> <p>3 process, and failure to do so could result in</p> <p>4 irrevocable harm to water and mineral interests in</p> <p>5 Montgomery County. And again, I would urge to allow</p> <p>6 this process to play out with some of these findings</p> <p>7 that are question marks that we have grave concerns</p> <p>8 over.</p> <p>9 And Montgomery County is a different place</p> <p>10 than it was in the early '90s when this well site was</p> <p>11 first chartered and then later picked up by TexCom.</p> <p>12 It's the tenth most populated county in the state out of</p> <p>13 254 today, and over 25 percent of Texans will live in</p> <p>14 this Houston region, including our county and using the</p> <p>15 Gulf Coast aquifer within the next couple of years.</p> <p>16 This isn't anything to play around with, and a short</p> <p>17 delay to find these decisions and to make conclusive</p> <p>18 these findings, I would urge that you give every</p> <p>19 consideration to today with the utmost respect. Thank</p> <p>20 you</p> <p>21 JUDGE WALSTON: Thank you, Representative</p> <p>22 Creighton. And I will note for the record that we</p> <p>23 received a letter from Representative Creighton and</p> <p>24 Senator Nichols. I received it this morning, and we'll</p> <p>25 make a copy of that and make sure all parties have it.</p>

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<p style="text-align: right;">42</p> <p>1 MR. RILEY: Thank you.</p> <p>2 JUDGE WALSTON: Okay. Mr. Riley, do you</p> <p>3 want to make your response? And one thing I would just</p> <p>4 like you to address --</p> <p>5 MR. RILEY: Sure.</p> <p>6 JUDGE WALSTON: -- Judge Egan and I even</p> <p>7 discussed this previously. If we go forward and then</p> <p>8 for some reason the Railroad Commission does withdraw</p> <p>9 the first letter, how does that impact this proceeding?</p> <p>10 MR. RILEY: We believe it doesn't, and the</p> <p>11 concept is a threshold. One must pass a threshold in</p> <p>12 the process, and there are two noted in statute. The</p> <p>13 first is at the outset or onset, however you'd like to</p> <p>14 think about it, the onset of the application; that under</p> <p>15 the water code provision cited in Section (a), it states</p> <p>16 that an application must contain a Railroad Commission</p> <p>17 finding of no harm, or words to that affect. I'm</p> <p>18 paraphrasing, of course.</p> <p>19 Section (b), and as I said earlier,</p> <p>20 suggests that in the event something changes -- because</p> <p>21 if we play this out in a practical level, if I can't</p> <p>22 submit an application without that letter, then</p> <p>23 certainly -- I have the letter, I need to pass the first</p> <p>24 threshold before I could ever get to a hearing. I won't</p> <p>25 go to a hearing on an application that's not been</p>	<p style="text-align: right;">44</p> <p>1 statute is it would not apply depending -- an</p> <p>2 application would only apply to new applications after</p> <p>3 the effective date. So the notion that Section (c)</p> <p>4 doesn't apply to this application is just a</p> <p>5 misunderstanding apparently on Ms. Mendoza's part and</p> <p>6 her legal team, that somehow Section (c), which has been</p> <p>7 in the law since 1993, is not applicable here.</p> <p>8 But passing that point, looking at</p> <p>9 Section (3) there must be -- something must give meaning</p> <p>10 to that section. Rules of statutory construction</p> <p>11 requires it to. So with that instruction -- excuse</p> <p>12 me -- what Section (c) says is that if there is a</p> <p>13 no-harm letter, I assume -- and I guess I have to</p> <p>14 identify assume somewhat -- that the Commission is then</p> <p>15 bound to the no-harm finding. That's all. It's not --</p> <p>16 it suggests that something could happen in hearing that</p> <p>17 would undermined the no-harm finding that the Commission</p> <p>18 would still not be able to deviate from the Railroad</p> <p>19 Commission finding.</p> <p>20 What is being suggested here is that the</p> <p>21 Railroad Commission has veto power over this</p> <p>22 application. That veto power continues apparently</p> <p>23 forever because I see no reason to distinguish. There's</p> <p>24 nothing in the statute that suggests the Railroad</p> <p>25 Commission couldn't change its mind after the Commission</p>
<p style="text-align: right;">43</p> <p>1 submitted.</p> <p>2 So I get through the first doorway, so to</p> <p>3 speak, or over the first threshold in the statute, and</p> <p>4 I -- there's another threshold. So let's suppose that</p> <p>5 something happens during the application process where</p> <p>6 the Railroad Commission changed its mind or something is</p> <p>7 altered. If that happens, then the second threshold</p> <p>8 must be crossed. In other words, I can't go forward in</p> <p>9 a hearing other than on preliminary matters unless I</p> <p>10 have the no-harm letter from the Railroad Commission.</p> <p>11 That's it.</p> <p>12 Once we're passed the second threshold,</p> <p>13 there's no opportunity for a change in circumstances</p> <p>14 that's meaningful in any way other than if you look at</p> <p>15 Section (c).</p> <p>16 Now, let me just address Ms. Mendoza's --</p> <p>17 I don't mean to be flippant about Ms. Mendoza's comment.</p> <p>18 Clearly what the note refers to is when legislation</p> <p>19 passes, it has an effective date. And when applications</p> <p>20 are pending, this is always a question. When there's</p> <p>21 new legislation and the question is "Okay. What does</p> <p>22 this new legislation apply to," well, at the time when</p> <p>23 that legislation passed, it applied to pending</p> <p>24 applications.</p> <p>25 An alternate way of looking at a new</p>	<p style="text-align: right;">45</p> <p>1 issues the permit.</p> <p>2 So what Ms. Mendoza is suggesting is that</p> <p>3 the Railroad Commission essentially is the permit issuer</p> <p>4 in this case. That's not the case, and that's clearly</p> <p>5 not the case. They don't have authority to issue</p> <p>6 Class I UIC permits. They are not delegated that</p> <p>7 authority by the state or federal governments. And so</p> <p>8 they don't have veto power over this application, which</p> <p>9 is the way, I would suggest, one has to interpret the</p> <p>10 statute in order to even suggest that something the</p> <p>11 Railroad Commission might do now is relevant.</p> <p>12 I say relevant, is a nonstarter. If the</p> <p>13 Railroad Commission rescinds its order, there are a</p> <p>14 couple of problems the Railroad Commission would face in</p> <p>15 doing so: One is administrative agencies cannot apply</p> <p>16 decisions retroactively. Courts can do that, and there</p> <p>17 may be some argument that Ms. Mendoza likes to make in</p> <p>18 front of somebody some day that the Railroad Commission</p> <p>19 authority is -- I think she's using the word</p> <p>20 "jurisdictional" in that context as well, that it is</p> <p>21 jurisdictional for the TCEQ to move forward to have that</p> <p>22 Railroad Commission letter. They had it. We've passed</p> <p>23 that threshold.</p> <p>24 So I guess -- I hope I've answered your</p> <p>25 question, Judge, that the notion is there's a continuum</p>

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46	<p>1 of time, and the Railroad Commission has a voice at some</p> <p>2 point, but it cannot retain that voice, or it does not</p> <p>3 retain that voice throughout all time. If that were the</p> <p>4 case, then it really shouldn't matter whether we</p> <p>5 continue or not as the ultimate disposition if the</p> <p>6 Railroad Commission can veto this permit at some point,</p> <p>7 well, then so be it.</p> <p>8 I don't believe that's a law. I don't</p> <p>9 believe it's a law, either specifically in this case or</p> <p>10 generally, that administrative agencies have the</p> <p>11 authority to retroactively apply their decisions. This</p> <p>12 decision of the Railroad Commission has been in place</p> <p>13 since 2005. Nothing has disrupted that decision as we</p> <p>14 sit here today. And frankly, it's intact just as it was</p> <p>15 in 2005. The fact that Denbury has raised a complaint</p> <p>16 about it is simply that. There are lots of ways to</p> <p>17 complain. Denbury clearly is complaining, but has no</p> <p>18 relevance to our proceeding.</p> <p>19 The other issues about the notice</p> <p>20 requirements, we heard from the Executive Director --</p> <p>21 and again, we are at a disadvantage because of the</p> <p>22 lateness of the filing, but there are two possibilities.</p> <p>23 Right? The first possibility is that the notice is</p> <p>24 jurisdictional, in which case it isn't waived. So if</p> <p>25 that's the case, which we don't believe is the case,</p>	48	<p>1 389. Do you want the LEXIS cite?</p> <p>2 JUDGE WALSTON: No. That's 389, you said?</p> <p>3 MR. RILEY: 389.</p> <p>4 JUDGE WALSTON: 288, 389, okay. Thank</p> <p>5 you. I didn't mean to interrupt you.</p> <p>6 MR. RILEY: That's fine. There are two</p> <p>7 elements here then. If it's a jurisdictional</p> <p>8 requirement, then as I said, it won't be waived at some</p> <p>9 later time if indeed that's the case. If it's not, then</p> <p>10 Ms. Mendoza's motion is a motion for summary</p> <p>11 disposition. That's the nature of it. And she is</p> <p>12 asking you at this late hour to dispose of this case</p> <p>13 because of a failure of notice.</p> <p>14 If she's right, then the issue -- well,</p> <p>15 the issue has been there, and Denbury has been a</p> <p>16 participant now for months, and so they certainly could</p> <p>17 have filed a motion for summary disposition 20 days ago</p> <p>18 as the rules require. She's not raised it in testimony.</p> <p>19 Lots of folks around the room have said, "Now we know.</p> <p>20 Now we know the facts." We don't know any facts.</p> <p>21 Respectfully all we know is that a landman who works for</p> <p>22 Denbury pulled some property records and signed an</p> <p>23 affidavit. We don't know any facts beyond that. And so</p> <p>24 while everyone is quick to jump and say, "Now we know</p> <p>25 something is wrong and we're suspicious of TexCom's</p>
47	<p>1 then the parties are not prejudiced other than the</p> <p>2 commitment of time to this proceeding, which is long</p> <p>3 overdue. As you know, we were ready to proceed months</p> <p>4 ago. Through Denbury's intervention, we were delayed</p> <p>5 some months. But we are here. We've spent huge</p> <p>6 resources as the applicant. I'm sure others have, too.</p> <p>7 We've taken depositions. We have our witnesses here.</p> <p>8 We're ready to go. So in terms of whether there will be</p> <p>9 prejudice to any party, if it is a jurisdictional issue,</p> <p>10 then it is a jurisdictional issue, some would argue,</p> <p>11 throughout the process.</p> <p>12 I believe that recent Supreme Court case</p> <p>13 law suggests the only jurisdictional issues are the ones</p> <p>14 that the legislature specifies. If I had more time to</p> <p>15 brief that, I'd be happy to do it, but as I responded</p> <p>16 this morning, I haven't had a chance.</p> <p>17 JUDGE WALSTON: Do you by chance have a</p> <p>18 cite to any of them?</p> <p>19 MR. RILEY: I do. It's the city of Dakota</p> <p>20 is where the concept is -- it's floating on my desk</p> <p>21 somewhere, and I'll try to give you a cite here in a</p> <p>22 second. It's probably under my pad. I have it.</p> <p>23 JUDGE WALSTON: Okay.</p> <p>24 MR. RILEY: It is the City of De Soto vs.</p> <p>25 Justin White, Respondent, and the citation is 288 S.W.3d</p>	49	<p>1 application, I find that irresponsible candidly. I find</p> <p>2 it irresponsible to simply take someone else's</p> <p>3 affidavit, who may favor the request where the parties</p> <p>4 want to go, but they are simply saying "We believe</p> <p>5 them." That's all they're saying. And there's no</p> <p>6 evidence of that. There's been no opportunity to</p> <p>7 depose. There's been no discovery on these issues, no</p> <p>8 opportunity for us to search property records ourselves.</p> <p>9 So the notion that we know something is preposterous.</p> <p>10 We have an affidavit from a Denbury employee, a party in</p> <p>11 this case.</p> <p>12 We are here. We are ready. This case is</p> <p>13 long overdue, and we should proceed because, as all</p> <p>14 parties have stated, significant resources has been</p> <p>15 expended. And while I remember vividly Denbury</p> <p>16 saying -- even this morning saying, "We should decide</p> <p>17 this case on the evidence." That's what TexCom is</p> <p>18 asking for, too. But instead we are talking about</p> <p>19 procedural issues that really do not bear on deciding</p> <p>20 this case on the fair evidence presented to Your Honors.</p> <p>21 Thank you.</p> <p>22 MR. FORSBERG: Your Honors, may I say --</p> <p>23 oh.</p> <p>24 MS. MENDOZA: Your Honors, if I might</p> <p>25 respond? I'll go ahead and let you, and then I'll</p>

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50	<p>1 close.</p> <p>2 MR. FORSBERG: Are you sure?</p> <p>3 JUDGE WALSTON: Hang on just a minute.</p> <p>4 (Discussion off the record)</p> <p>5 JUDGE WALSTON: Mr. Forsberg, did you want</p> <p>6 to --</p> <p>7 MR. FORSBERG: I just had a brief comment</p> <p>8 about what Mr. Riley said about we don't know anything.</p> <p>9 I mean, Ms. Mendoza did offer, as an alternative, to put</p> <p>10 on a witness in evidence, and I believe Mr. Ross is</p> <p>11 here, who is president and CEO of TexCom. Can he get on</p> <p>12 the stand and say he owns the mineral rights?</p> <p>13 MR. RILEY: Well, unlike Mr. Forsberg, we</p> <p>14 don't do impromptu proceedings. We would like</p> <p>15 discovery. We'd like to do our own records search.</p> <p>16 MR. FORSBERG: That's what we're asking</p> <p>17 for.</p> <p>18 MR. RILEY: He cannot -- no, we're not.</p> <p>19 MR. FORSBERG: That's what we're asking</p> <p>20 for.</p> <p>21 MR. RILEY: Mr. Forsberg, we're not going</p> <p>22 to make it up as we go along. You can if you like, if</p> <p>23 that's your choice, but we would like the opportunity to</p> <p>24 respond intelligently and thoughtfully.</p> <p>25 MR. FORSBERG: We'd like to give him</p>	52	<p>1 "Look, this is what we are finding. Do you have</p> <p>2 anything? Because we do not want to file a motion if</p> <p>3 you have an unrecorded deed or something like that."</p> <p>4 And I don't think that they have that, and they've had</p> <p>5 the burden on this for five years. They've answered</p> <p>6 questions in their application saying they owned it.</p> <p>7 They put in maps in their application saying that they</p> <p>8 owned it. They testified to it at the hearing that</p> <p>9 those -- that the application was accurate. One would</p> <p>10 presume they have some basis for that and would be able</p> <p>11 to bring it forward.</p> <p>12 So first they say, "We are the mineral</p> <p>13 interest owner." We do not believe that to be true. We</p> <p>14 believe the evidence clearly shows that it's not</p> <p>15 correct. Then TexCom gets its Railroad Commission</p> <p>16 letter. The mineral interest owner still hasn't been</p> <p>17 notified. And now they're saying, "Well, now that</p> <p>18 really doesn't even matter what the Railroad Commission</p> <p>19 says so long as they said it once. No matter what they</p> <p>20 decide later, it doesn't really matter because they</p> <p>21 managed to get in the door."</p> <p>22 And I think the Railroad Commission would</p> <p>23 probably be surprised to hear that they now can't</p> <p>24 consider new information, that they can't consider</p> <p>25 whether the information that was provided to them to</p>
51	<p>1 several months to do so.</p> <p>2 JUDGE WALSTON: Ms. Mendoza?</p> <p>3 MS. MENDOZA: Yes, I do want to -- I think</p> <p>4 that Mr. Riley's comments about the -- implying in some</p> <p>5 way that our witness is somehow not being truthful in</p> <p>6 his sworn affidavit are inappropriate. That witness is</p> <p>7 here to take the stand. He worked very hard all day</p> <p>8 yesterday to thoroughly research what the applicant had</p> <p>9 the burden to research many, many years ago.</p> <p>10 The applicant clearly had this called to</p> <p>11 their attention if they had only looked at their own</p> <p>12 deed which reserved their mineral interests. They bear</p> <p>13 the burden upon this point. It is their burden. The</p> <p>14 rules placed that burden upon them. It is everybody's</p> <p>15 interest, not only Denbury's, but every party here</p> <p>16 should be interested in having the notice properly given</p> <p>17 and having the Judges and SOAH and the TCEQ to have</p> <p>18 jurisdiction over this matter before we have a hearing.</p> <p>19 But I do want to address Mr. Riley's</p> <p>20 arguments about the Railroad Commission as well.</p> <p>21 TexCom's argument basically boils town to TexCom says</p> <p>22 "I'm the mineral interest owner." We are very -- we</p> <p>23 feel very confident they are not. There's no record.</p> <p>24 We asked them yesterday afternoon -- before we had</p> <p>25 finished our research, we called them and we said,</p>	53	<p>1 obtain the letter was correctly provided to them. I</p> <p>2 think they would find that surprising.</p> <p>3 I think the TCEQ would find it surprising</p> <p>4 in a similar situation that they would not have the</p> <p>5 ability to look at an issue if substantial new evidence</p> <p>6 is presented to them or if there was something that was</p> <p>7 presented to them incorrectly. I cannot believe that it</p> <p>8 is actually the rule that agencies cannot reconsider</p> <p>9 decisions, which seems to be the actual position that</p> <p>10 Mr. Riley is trying to advance with regard to the</p> <p>11 Railroad Commission.</p> <p>12 These are serious jurisdictional matters,</p> <p>13 and we should get these. We are not saying that you-all</p> <p>14 can dispose of this case. Although if Mr. Riley</p> <p>15 believes that that is appropriate for you-all to dispose</p> <p>16 of the case because of a failure of notice, we would be</p> <p>17 happy to have the case disposed of. But what we are</p> <p>18 saying is that we are here and we have the opportunity</p> <p>19 to fix this rather than to allow a fundamental error to</p> <p>20 continue to run throughout this entire proceeding, and</p> <p>21 we should take that time and fix this. Thank you.</p> <p>22 JUDGE WALSTON: Let me ask just a couple</p> <p>23 of clarifying questions of you. One, has Denbury made</p> <p>24 any attempt to contact Sabine Royalty?</p> <p>25 MS. MENDOZA: No, not to my knowledge.</p>

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54	<p>1 JUDGE WALSTON: Okay.</p> <p>2 MS. MENDOZA: I'm going to say I believe</p> <p>3 we pay them royalties, but we have not talked to them</p> <p>4 about this hearing. We have not -- we don't represent</p> <p>5 them, so --</p> <p>6 JUDGE WALSTON: And concerning the notice</p> <p>7 issue separate and apart from the Railroad Commission</p> <p>8 letter, does the notice issue -- I thought I understood</p> <p>9 from the arguments in your motion that applies to the</p> <p>10 mineral interest owner under the tract where the</p> <p>11 facility will be located?</p> <p>12 MS. MENDOZA: It applies -- the notice is</p> <p>13 actually required to be given both to the mineral</p> <p>14 interest owner on the tract on which the facility is to</p> <p>15 be located and the adjacent property, the landowner --</p> <p>16 the persons who own the mineral rights underlying the</p> <p>17 tracts of land adjacent to the property on which the</p> <p>18 existing or proposed injection well facility is or will</p> <p>19 be located. So it's both this and the adjacent. In</p> <p>20 their application, they say it's Exxon. We simply</p> <p>21 haven't had time to look at that. We have relied upon</p> <p>22 basically that they were accurately saying that in their</p> <p>23 application, and apparently that wasn't the case.</p> <p>24 JUDGE WALSTON: If I understand, the</p> <p>25 Railroad Commission letter is actually broader than</p>	56	<p>1 associated with the no-harm letter at the Railroad</p> <p>2 Commission other than the Railroad Commission's careful</p> <p>3 consideration of the technical aspects, which they did</p> <p>4 twice, I'd like to point out.</p> <p>5 JUDGE WALSTON: Let me ask one other</p> <p>6 question just to refresh our memory.</p> <p>7 MR. RILEY: Sure.</p> <p>8 JUDGE WALSTON: I know Wapiti was never</p> <p>9 involved in this case, but there was apparently a</p> <p>10 separate lawsuit. Now, what --</p> <p>11 MR. RILEY: That's correct.</p> <p>12 JUDGE WALSTON: They were a lessee or</p> <p>13 operator or --</p> <p>14 MR. RILEY: No, they were in Denbury's</p> <p>15 shoes, and prior to that it was Exxon. Exxon was the</p> <p>16 operator of the Conroe Field, and I'm going to bet</p> <p>17 that -- as we know from Denbury's various pleadings and</p> <p>18 carrying on in testimony as operator of the field, they</p> <p>19 have significant responsibilities to all the interest</p> <p>20 holders. So Exxon was notified as the operator of the</p> <p>21 field.</p> <p>22 Wapiti succeeded Exxon as the operator of</p> <p>23 the field and preceded Denbury. Wapiti brought a</p> <p>24 lawsuit -- and this was talked about in the earlier</p> <p>25 hearing -- and after TexCom answered that lawsuit,</p>
55	<p>1 that. It deals with any known reservoir. Correct?</p> <p>2 MS. MENDOZA: Yes, it is.</p> <p>3 JUDGE WALSTON: Okay.</p> <p>4 MR. RILEY: Let me point out just a couple</p> <p>5 quick things. One is that Ms. Mendoza has suggested</p> <p>6 that the Railroad Commission might have had input from</p> <p>7 mineral interest owners in issuing its no-harm letter.</p> <p>8 As you know from the statute, the application, before it</p> <p>9 even is received by the TCEQ, must contain that no-harm</p> <p>10 letter. So there's not -- it doesn't contemplate the</p> <p>11 Railroad Commission -- the process before the Railroad</p> <p>12 Commission or notice given by the Railroad Commission to</p> <p>13 mineral interest owners. It's simply a technical</p> <p>14 determination by the Railroad Commission on a field in</p> <p>15 this case that they've known quite a bit about for the</p> <p>16 last 70 plus years.</p> <p>17 So the misstatement by Ms. Mendoza is that</p> <p>18 somehow the Railroad Commission might have made a</p> <p>19 different decision at the outset of this case is</p> <p>20 incorrect, that public notice or notice under TCEQ rules</p> <p>21 would have affected that in any way. It simply comes</p> <p>22 later in the application process. So the Railroad</p> <p>23 Commission issued the no-harm letter, as it did in this</p> <p>24 case, it is submitted with the application, and then the</p> <p>25 application goes to notice. There's no process</p>	57	<p>1 Wapiti nonsuited that case. So that case went away. I</p> <p>2 can't really speak to why Wapiti did what it did, but I</p> <p>3 know that it was after it received a response to -- a</p> <p>4 responsive pleading that they elected to nonsuit their</p> <p>5 case unilaterally.</p> <p>6 JUDGE WALSTON: Okay. Thank you. Did you</p> <p>7 need to add anything, Ms. Mendoza, based on those</p> <p>8 comments?</p> <p>9 MS. MENDOZA: I think that now the</p> <p>10 argument is that nobody gets any notice, the Railroad</p> <p>11 Commission makes its decision, then presumably the</p> <p>12 correct notice is given. And those people who I assume</p> <p>13 Mr. Riley would say can't be heard here because they own</p> <p>14 minerals also can't be heard at the Railroad Commission</p> <p>15 because the Railroad Commission has already acted, and</p> <p>16 the threshold has already been passed, and they've</p> <p>17 gotten in the door, and thus, we can't ever reconsider</p> <p>18 that issue.</p> <p>19 I don't think that's what it is. This is</p> <p>20 a fundamental issue of people getting notice about</p> <p>21 something. And if notice had been given, we wouldn't</p> <p>22 be -- if notice had been given correctly, we wouldn't be</p> <p>23 here filing this motion. Perhaps we wouldn't even be</p> <p>24 here because perhaps the Railroad Commission might have</p> <p>25 heard from people whose interest might have forced them</p>

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<p style="text-align: right;">58</p> <p>1 over there.</p> <p>2 I will say that Denbury is not the mineral</p> <p>3 interest owner on this tract. We do not represent their</p> <p>4 interests. Their interests are not in any way otherwise</p> <p>5 represented in this hearing. Those mineral interest</p> <p>6 owners are entitled to notice. We should take the time,</p> <p>7 we should fix this issue, and then we should proceed.</p> <p>8 Thank you.</p> <p>9 JUDGE WALSTON: Thank you. Okay. We're</p> <p>10 going to go off the record to take the matter under</p> <p>11 advisement. We're going to go confer, and so we will</p> <p>12 reconvene at 11:15.</p> <p>13 MR. RILEY: Thank you.</p> <p>14 JUDGE WALSTON: So we'll go off the record</p> <p>15 at this time.</p> <p>16 (Recess: 10:38 a.m. to 11:17 a.m.)</p> <p>17 JUDGE WALSTON: Okay. We'll go back on</p> <p>18 the record. Judge Egan and I have had a chance to</p> <p>19 confer, and first on the motion for continuance, the</p> <p>20 motion for a continuance will be denied; that looking at</p> <p>21 27.015(b), it states that, you know, the Commission</p> <p>22 should not proceed without a letter. But at this stage,</p> <p>23 the Commission has a letter. It has not been set aside.</p> <p>24 It has not been rescinded, and it's still in effect. So</p> <p>25 we think we have authority to proceed and should</p>	<p style="text-align: right;">60</p> <p>1 mean, close of business tomorrow, as you know, from my</p> <p>2 hopefully insignificant request compared to Denbury, is</p> <p>3 I hope to be in Travis County District Court. If fact,</p> <p>4 I have to be in Travis County District Court. Have you</p> <p>5 considered that request as to whether --</p> <p>6 JUDGE WALSTON: I was about to. It's on</p> <p>7 my list of preliminary matters.</p> <p>8 MR. RILEY: Okay.</p> <p>9 JUDGE WALSTON: I was going to bring that</p> <p>10 up next.</p> <p>11 MR. RILEY: Okay. But what I'm asking for</p> <p>12 is perhaps we can have until Friday morning -- is that</p> <p>13 right, no -- until Thursday morning. Thursday morning.</p> <p>14 JUDGE WALSTON: That will be fine. Are</p> <p>15 you okay with that?</p> <p>16 JUDGE EGAN: I'm fine with that.</p> <p>17 JUDGE WALSTON: Yeah, that's fine.</p> <p>18 MR. RILEY: Thank you.</p> <p>19 JUDGE WALSTON: All right. Well, then the</p> <p>20 next matter was, we had a letter from Mr. Riley that</p> <p>21 needs to -- he needs to be out tomorrow afternoon,</p> <p>22 June 16th. And your certificate of conference noted</p> <p>23 that the individual protestants and the aligned</p> <p>24 protestants opposed that. So I was going to give them</p> <p>25 an opportunity to address it.</p>
<p style="text-align: right;">59</p> <p>1 proceed.</p> <p>2 On the plea to the jurisdiction, we're</p> <p>3 going to take that under advisement to give TexCom and</p> <p>4 the ED, at least, an opportunity to file a written</p> <p>5 response by close of business tomorrow. We would</p> <p>6 request one from them. And the other parties who --</p> <p>7 other protestants, if they wish to, they can, but they</p> <p>8 are not required to by close of business tomorrow.</p> <p>9 We're going to take that under advisement, but we're</p> <p>10 still going to go ahead and proceed today with that</p> <p>11 under advisement with the testimony.</p> <p>12 MR. RILEY: Thank you.</p> <p>13 JUDGE WALSTON: So is that what you were</p> <p>14 going to --</p> <p>15 MR. RILEY: It helps, Judges. We have</p> <p>16 found, in the limited time we've had and just from</p> <p>17 records we have already produced, that the property</p> <p>18 records submitted by Denbury this morning are incomplete</p> <p>19 at best, and that there actually was a transfer from the</p> <p>20 Sabine Royalty Corp. to Semptra Energy. And what I'm</p> <p>21 looking at is an incomplete reference.</p> <p>22 JUDGE WALSTON: That will give you a</p> <p>23 chance by at least close of business tomorrow to file a</p> <p>24 response.</p> <p>25 MR. RILEY: And Judges, since we're -- I</p>	<p style="text-align: right;">61</p> <p>1 MR. FORSBERG: Yes, Your Honor. Thank</p> <p>2 you. It's a pretty simple matter. I mean, this matter</p> <p>3 has been pending. Applicant and counsel has known for a</p> <p>4 good, long time when this hearing was going to occur.</p> <p>5 If a hearing is already called, I don't see how a</p> <p>6 district judge in normal practice can force Mr. Riley to</p> <p>7 leave a hearing, an ongoing hearing.</p> <p>8 And I have a lot of folks who traveled up</p> <p>9 here on their own expense. We agreed to do this in</p> <p>10 Austin this time without asking to go to Conroe. These</p> <p>11 folks came up here, and we're essentially asking them to</p> <p>12 just have no -- wasting Wednesday afternoon when, you</p> <p>13 know, we've known this for a long time, they've traveled</p> <p>14 up.</p> <p>15 You know, it seems like Mr. Riley -- a</p> <p>16 reasonable request to a district judge would be "We have</p> <p>17 an ongoing hearing at SOAH." There are dozens of</p> <p>18 witnesses here waiting. You know, we've got experts</p> <p>19 being paid by the hour, whether they are testifying or</p> <p>20 not, that we just need to proceed forward and if the</p> <p>21 district judge could reset whatever hearing until this</p> <p>22 matter is concluded.</p> <p>23 JUDGE WALSTON: Okay. Thank you.</p> <p>24 Mr. Walker?</p> <p>25 MR. WALKER: I agree with the comment --</p>

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62	<p>1 pardon me. Thank you. I agree with the comments of the</p> <p>2 counsel for the individual protestants. I would hope</p> <p>3 that a hearing that has already begun would be</p> <p>4 recognized by a district judge in this state as having</p> <p>5 precedent for the appearance of participants in this</p> <p>6 hearing. So I would agree that this hopefully would</p> <p>7 have precedence.</p> <p>8 JUDGE WALSTON: And I appreciate your</p> <p>9 concerns and your comments, but we will grant the</p> <p>10 request --</p> <p>11 MR. RILEY: Thank you.</p> <p>12 JUDGE WALSTON: -- and allow you to go.</p> <p>13 And we try to accommodate parties with witnesses and so</p> <p>14 forth in scheduling as best we can. And I understand</p> <p>15 apparently Judge Dietz has a significant matter.</p> <p>16 MR. RILEY: That's correct.</p> <p>17 JUDGE WALSTON: We'll grant the request.</p> <p>18 So we'll recess tomorrow afternoon to allow that.</p> <p>19 MR. RILEY: Thank you.</p> <p>20 MS. MENDOZA: Your Honor, if I can comment</p> <p>21 for just a moment --</p> <p>22 JUDGE WALSTON: Yes.</p> <p>23 MS. MENDOZA: -- I have two comments. One</p> <p>24 is I understand that the briefing that the parties need</p> <p>25 to do, and I support having them brief it. I would ask</p>	64	<p>1 Okay. Were there any other -- that's all</p> <p>2 the preliminary matters that I had. Any other</p> <p>3 preliminary matters the parties have?</p> <p>4 (No response)</p> <p>5 MR. RILEY: Oh, I'm sorry. There is a</p> <p>6 preliminary matter. We think we know, but we think it's</p> <p>7 helpful to clarify, we don't actually know the order of</p> <p>8 witnesses at this point or even order of presentation.</p> <p>9 But we believed that Denbury would follow the protestant</p> <p>10 groups in due course, but we haven't been told that, and</p> <p>11 so we figured it would be appropriate to clarify that</p> <p>12 now.</p> <p>13 JUDGE WALSTON: Okay. That's good. In</p> <p>14 fact, I'm glad you brought that up because Judge Egan</p> <p>15 had sent me a note about that a minute ago, and I</p> <p>16 forgot.</p> <p>17 But first of all, at the end of each</p> <p>18 day -- and we'll go over the order of presentation in a</p> <p>19 minute -- but at the end of each day for the parties to</p> <p>20 let the other parties know what witnesses are going to</p> <p>21 be called, you know, anticipated for the following day.</p> <p>22 And we had thought in the order -- well,</p> <p>23 first, we had the order of cross-examination for the</p> <p>24 TexCom witnesses today, and we're going to have Lone</p> <p>25 Star first, then Denbury, then the individual</p>
63	<p>1 that perhaps in light of the fact we're going to recess</p> <p>2 tomorrow mid-day any way, that perhaps we recess at this</p> <p>3 point and allow the parties to devote some time to doing</p> <p>4 that.</p> <p>5 The second thing is I would note that I</p> <p>6 think Mr. Riley has a document in their own document</p> <p>7 production that while he says indicates we are wrong, it</p> <p>8 also indicates that they are wrong about the ownership.</p> <p>9 JUDGE WALSTON: That may be, but we're not</p> <p>10 going to get into that right now.</p> <p>11 MS. MENDOZA: Okay.</p> <p>12 MR. RILEY: Thank you.</p> <p>13 JUDGE WALSTON: And we're not going to</p> <p>14 recess now. We're going to go ahead and proceed.</p> <p>15 And then the other thing I'll just note</p> <p>16 for the record that, Mr. Humphrey, you're going to be</p> <p>17 out a couple of days.</p> <p>18 MR. HUMPHREY: Yes, Your Honor.</p> <p>19 JUDGE WALSTON: You sent us a letter to</p> <p>20 that effect.</p> <p>21 MR. HUMPHREY: Right, but I didn't intend</p> <p>22 to revisit the schedule. Someone from my office may be</p> <p>23 here on Thursday or Friday just to sit in for me, but</p> <p>24 I'm not certain of that.</p> <p>25 JUDGE WALSTON: Okay. Thank you.</p>	65	<p>1 protestants, then the aligned protestants and the Public</p> <p>2 Interest Counsel and the Executive Director. And</p> <p>3 looking back at the transcript, that's the same order as</p> <p>4 it was in the first hearing, except we've placed Denbury</p> <p>5 in after Lone Star. So that would be the order of</p> <p>6 cross-examination of TexCom witnesses.</p> <p>7 And our thought on the order of</p> <p>8 presentations by the other parties after TexCom rests</p> <p>9 would basically be the same, the same as what we just</p> <p>10 stated.</p> <p>11 MR. RILEY: All right.</p> <p>12 JUDGE WALSTON: So Lone Star would be</p> <p>13 first, then Denbury, then individual protestants, then</p> <p>14 the aligned protestants --</p> <p>15 MR. RILEY: Okay.</p> <p>16 JUDGE WALSTON: -- and then the Executive</p> <p>17 Director last.</p> <p>18 And if for some reason, as I was stating a</p> <p>19 while ago, if somebody has a problem with witnesses</p> <p>20 being on a particular day, we're amenable, pretty</p> <p>21 amenable, to call witnesses out of order. So just let</p> <p>22 us know in advance and the parties know in advance.</p> <p>23 Okay. And then if there's nothing else,</p> <p>24 the applicant can proceed with its case.</p> <p>25 MR. RILEY: The applicant calls Richard</p>

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66	<p>1 Bost, B-o-s-t.</p> <p>2 JUDGE WALSTON: Okay. Mr. Bost, will you</p> <p>3 raise your right hand?</p> <p>4 (Witness Bost sworn)</p> <p>5 JUDGE WALSTON: Okay. And state your full</p> <p>6 name for the record, and you've got to lean right into</p> <p>7 that microphone. Speak up good and loud so everyone can</p> <p>8 hear. Thank you.</p> <p>9 WITNESS BOST: Richard Carroll Bost.</p> <p>10 JUDGE WALSTON: Thank you, Mr. Bost.</p> <p>11 Mr. Riley?</p> <p>12 MR. RILEY: Thank you, Your Honor.</p> <p>13 PRESENTATION ON BEHALF OF TEXCOM GULF DISPOSAL, LLC</p> <p>14 RICHARD CARROLL BOST,</p> <p>15 having been first duly sworn, testified as follows:</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. RILEY:</p> <p>18 Q It's still morning. Good morning, Mr. Bost.</p> <p>19 A Good morning.</p> <p>20 Q Mr. Bost, have you been retained by the</p> <p>21 applicant in this matter to provide expert testimony?</p> <p>22 A I have.</p> <p>23 Q And in preparation for this morning's</p> <p>24 proceeding, have you prepared what we refer to as</p> <p>25 prefiled testimony?</p>	68	<p>1 my credentials as including certification as a</p> <p>2 groundwater professional, a national certification.</p> <p>3 That certification has lapsed as a result of nonrenewal</p> <p>4 of our professional membership, and it's in the process</p> <p>5 of being addressed, but currently I'm not a certified</p> <p>6 groundwater professional.</p> <p>7 Q And with that clarification of your prefiled</p> <p>8 testimony in this matter identified as Exhibit 92 and</p> <p>9 your CV as Exhibit 93, do you adopt those exhibits as</p> <p>10 your testimony -- direct testimony in this case?</p> <p>11 A Yes.</p> <p>12 MR. RILEY: With that, Your Honor, I</p> <p>13 believe we had objections to prefiled, but just for the</p> <p>14 record, I'd offer Exhibits 92 and 93 into the record.</p> <p>15 JUDGE WALSTON: Exhibits 92 and 93 are</p> <p>16 admitted.</p> <p>17 (Exhibit TexCom Nos. 92 and 93 admitted)</p> <p>18 JUDGE WALSTON: And does Lone Star have</p> <p>19 cross-examination?</p> <p>20 MR. HILL: Very briefly, Your Honors.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. HILL:</p> <p>23 Q Good morning, Mr. Bost. My name is Jason Hill.</p> <p>24 I'm an attorney for the Lone Star Groundwater</p> <p>25 Conservation District. I have a question for you on</p>
67	<p>1 A I have.</p> <p>2 Q Somewhere up there in that sea of binders you</p> <p>3 may find a copy of your prefiled testimony. Would you</p> <p>4 take a moment, first find it, and then second, look</p> <p>5 through the prefiled testimony and exhibits?</p> <p>6 A It appears to be complete.</p> <p>7 Q And have you had a chance to look at -- I</p> <p>8 believe that's Exhibit 92. Is that correct it's been</p> <p>9 labeled Exhibit 92?</p> <p>10 A Yes.</p> <p>11 Q Is there an Exhibit 93 also before you?</p> <p>12 A Yes.</p> <p>13 Q And what is Exhibit 93?</p> <p>14 A It's my CV.</p> <p>15 Q Have you had an opportunity -- I think I</p> <p>16 probably asked you this -- to review that testimony</p> <p>17 before you appeared this morning?</p> <p>18 A Yes, I have.</p> <p>19 Q Are there any changes you'd like to make to the</p> <p>20 testimony before I ask you to adopt it as your truthful</p> <p>21 testimony in this case?</p> <p>22 A There is one.</p> <p>23 Q Could you describe what change you'd like to</p> <p>24 make to the testimony?</p> <p>25 A The testimony, I believe, on Page 13 describes</p>	69	<p>1 Page 17 of TexCom Exhibit 92. Would you mind turning to</p> <p>2 that? On 11 -- or lines rather 11 and 12, you state</p> <p>3 that "For waste generated in Montgomery County in 2007,</p> <p>4 approximately 99.9 percent of that waste will dispose in</p> <p>5 counties other than Montgomery County." Is that a clear</p> <p>6 reflection of your testimony there?</p> <p>7 A Yes; in the context of the testimony, yes.</p> <p>8 Q Mr. Bost, does that suggest that 99.9 percent</p> <p>9 of all the waste that you describe here, what</p> <p>10 potentially will be Class I nonhazardous waste, all of</p> <p>11 that waste has a repository currently? Is that correct?</p> <p>12 A That is correct, that the waste that's</p> <p>13 currently being disposed of outside the county is being</p> <p>14 disposed of outside the county.</p> <p>15 Q Is there any part of this 99.9 percent of the</p> <p>16 waste that you say is disposed of outside the county</p> <p>17 that, in fact, is not being sent to an appropriately</p> <p>18 authorized facility for final repository, final</p> <p>19 disposition?</p> <p>20 A Not that I'm aware of.</p> <p>21 Q Okay. What about the remaining tenth of a</p> <p>22 percent? Can you tell me what the fate of that waste</p> <p>23 is?</p> <p>24 A It's being disposed of inside the county.</p> <p>25 Q So is it safe to say then that 100 percent of</p>

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70	<p>1 the waste that is generated in Montgomery County has a</p> <p>2 place that is licensed by the appropriate regulatory</p> <p>3 authority to be disposed of today?</p> <p>4 A Based upon the review of the records I did at</p> <p>5 the time, which was for the years 2007 and 2008, that is</p> <p>6 correct.</p> <p>7 MR. HILL: I pass the witness.</p> <p>8 JUDGE WALSTON: Okay. Denbury?</p> <p>9 MR. SENCENBAUGH: Very briefly, Your</p> <p>10 Honor. I know you can hear me, but I want to talk into</p> <p>11 the microphone here so the court reporter can hear us.</p> <p>12 MR. RILEY: Actually, I can't hear; so</p> <p>13 maybe a little closer to the microphone.</p> <p>14 MR. SENCENBAUGH: Maybe a little closer.</p> <p>15 That's better.</p> <p>16 CROSS-EXAMINATION</p> <p>17 BY MR. SENCENBAUGH:</p> <p>18 Q Now, Mr. Bost, I don't think we've met before.</p> <p>19 My name is Adam Sencenbaugh, and I'm an attorney for</p> <p>20 Denbury.</p> <p>21 A Good morning. However, I do pronounce it Bost.</p> <p>22 Q Bost? Okay.</p> <p>23 A Thank you.</p> <p>24 Q Thank you. And it's Mr. Bost, not Dr. Bost.</p> <p>25 Correct?</p>	72
71	<p>1 A That's correct.</p> <p>2 Q Okay. I just want to make sure I call you the</p> <p>3 right thing.</p> <p>4 Now, Mr. Bost, the applicant in this case,</p> <p>5 TexCom, has offered you as an expert in waste disposal.</p> <p>6 Correct?</p> <p>7 A In part, yes.</p> <p>8 Q Okay. And it's your understanding that the</p> <p>9 intent of the UIC disposal program is that the wastes</p> <p>10 that are disposed will remain trapped in the formation</p> <p>11 until they degrade naturally. Isn't that correct?</p> <p>12 A Yes. As a general simple statement, that's</p> <p>13 correct.</p> <p>14 Q Okay. And this natural degrading process for</p> <p>15 these wastes that are going to be injected can take a</p> <p>16 substantial amount of time. Correct?</p> <p>17 A They can in the case of some wastes --</p> <p>18 Q Okay.</p> <p>19 A -- conceptually.</p> <p>20 Q Okay. And that's because for permitting</p> <p>21 purposes you're looking at this from a 10,000-year</p> <p>22 perspective. Isn't that right?</p> <p>23 A Yes. The intent of the 10,000-year perspective</p> <p>24 is to take into account that given you're talking about</p> <p>25 a facility that is going to initiate operation, they may</p>	73

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74	<p>1 Q Okay. So that would be a report from the EPA</p> <p>2 generally talking about waste disposal. Correct? This</p> <p>3 wasn't a report that you reviewed directly discussing or</p> <p>4 reviewing TexCom's specific plans to inject waste into</p> <p>5 this specific formation. Correct?</p> <p>6 A It did not address specifically the TexCom</p> <p>7 application, but it did address the UIC permitting</p> <p>8 process, the current regulations, the current safety</p> <p>9 procedures in the program and the effectiveness of that</p> <p>10 as a technology method of disposal.</p> <p>11 Q Okay. And so it would be fair to say based on</p> <p>12 sort of what your response was that if the disposal</p> <p>13 program that TexCom is planning to permit complies with</p> <p>14 the general UIC program, which is that the waste be</p> <p>15 disposed permanently, and in your words for as long as</p> <p>16 10,000 years, you did not consider any scenario outside</p> <p>17 of this. Correct?</p> <p>18 MR. RILEY: Objection. I don't recall the</p> <p>19 witness saying "to use your own words." Counsel has got</p> <p>20 a few questions in there, but objection to form.</p> <p>21 JUDGE WALSTON: I'll overrule the</p> <p>22 objection. But you trailed off at the end, and I didn't</p> <p>23 hear the --</p> <p>24 MR. SENCENBAUGH: I'm trying just to</p> <p>25 restate his testimony for purposes of the question. So</p>	76	<p>1 scenario in which the waste that TexCom plans to inject</p> <p>2 migrated out of the formation they planned to inject it</p> <p>3 into? That's correct? Or isn't that correct? I'm</p> <p>4 sorry.</p> <p>5 A I did not consider a specific scenario. I did</p> <p>6 consider the risk of a release in the context of the UIC</p> <p>7 program and that technology in its comparison with</p> <p>8 alternative methods of disposal.</p> <p>9 Q But that's just for the UIC program generally.</p> <p>10 Correct?</p> <p>11 A That's included in the context of this</p> <p>12 application, yes.</p> <p>13 Q Which is intended to dispose of the waste</p> <p>14 permanently. Correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. Now, Mr. Bost, you're familiar with the</p> <p>17 statutory public interest requirements for a Class I</p> <p>18 disposal well under the UIC program. Correct?</p> <p>19 A I'm aware of them, yes.</p> <p>20 Q Okay. And so you're familiar with -- some of</p> <p>21 the factors that have to be considered are the operation</p> <p>22 of existing industries and the economic development to</p> <p>23 the state. And, in fact, you testified about some of</p> <p>24 this in your prefiled testimony. Correct?</p> <p>25 MR. RILEY: Objection to form. There's</p>
75	<p>1 the study -- let me just back up a little bit.</p> <p>2 Q (BY MR. SENCENBAUGH) So the study that you're</p> <p>3 talking about does not discuss TexCom's proposed plans.</p> <p>4 Correct?</p> <p>5 A That's correct.</p> <p>6 Q Okay. And so we've already covered this, but</p> <p>7 TexCom's proposed plans, as you understand them, are</p> <p>8 part of the UIC program which would call for permanent</p> <p>9 waste disposal. Correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. And so when you analyzed TexCom's plans</p> <p>12 in light of the public interest requirements for the UIC</p> <p>13 program, you didn't consider any scenario for TexCom's</p> <p>14 plans specifically in which TexCom's wastestreams</p> <p>15 migrated out of this contained formation. Correct? Or</p> <p>16 what you described as a contained formation. Correct?</p> <p>17 A If the question is, did I look at a release</p> <p>18 scenario for the TexCom well specifically as part of my</p> <p>19 task? No.</p> <p>20 Q That's not my question. Let me repeat it.</p> <p>21 Now, when you analyzed TexCom's plans in light of the</p> <p>22 public interest requirements for the UIC program, your</p> <p>23 understanding of those when you reviewed TexCom's</p> <p>24 application and your understanding of what you reviewed</p> <p>25 from Mr. Casey or Mr. Langhus, you didn't consider any</p>	77	<p>1 stops and starts in each question. Can we get a simple</p> <p>2 question out before counsel rephrases it in the same</p> <p>3 question?</p> <p>4 MR. SENCENBAUGH: I'll be happy to</p> <p>5 rephrase, Your Honor.</p> <p>6 JUDGE EGAN: Can you go just a little</p> <p>7 slower?</p> <p>8 MR. SENCENBAUGH: I will; yes, Your Honor.</p> <p>9 Q (BY MR. SENCENBAUGH) Now, let me just go --</p> <p>10 start back at the beginning. Mr. Bost, you know -- so</p> <p>11 you're familiar with the statutory requirements at</p> <p>12 issue -- correct -- or public interest requirements for</p> <p>13 the UIC program?</p> <p>14 A Yes.</p> <p>15 Q Okay. And you're familiar that within those</p> <p>16 requirements the Commission and the ALJs are to consider</p> <p>17 the operation of existing industries and the economic</p> <p>18 development of the state. That's part of -- that's part</p> <p>19 of those requirements. Correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. And judging from some of the things in</p> <p>22 your prefiled testimony, you understand that the</p> <p>23 economic impact of TexCom's facility is part of the</p> <p>24 public interest requirement. Correct?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">78</p> <p>1 Q Okay. And one of the things you discussed</p> <p>2 regarding TexCom's facility, going to what I assume</p> <p>3 would be the public interest requirement on the economic</p> <p>4 development side of that, is the number of jobs that</p> <p>5 could be created by TexCom's operations. Correct?</p> <p>6 A Yes.</p> <p>7 Q And do you recall how many jobs you testified</p> <p>8 could be created by TexCom's operations?</p> <p>9 A My recall is it would vary, but I believe I</p> <p>10 used 25 jobs as my evaluation point.</p> <p>11 Q And it's your understanding or your belief, I</p> <p>12 guess, that those jobs will have a positive economic</p> <p>13 impact on Montgomery County. Correct?</p> <p>14 A Yes, 25 additional jobs.</p> <p>15 Q And how would you calculate the economic impact</p> <p>16 of adding those jobs?</p> <p>17 A I'm sorry. I didn't understand.</p> <p>18 Q How would you calculate the economic impact to</p> <p>19 Montgomery County of adding those 25 or so jobs?</p> <p>20 A Well, one can look at it in different ways.</p> <p>21 There's the income associated with those positions.</p> <p>22 There is the expenditure of that income in terms of a</p> <p>23 multiplier factor in terms of the economy. There's, you</p> <p>24 know, taxes those folks pay.</p> <p>25 Q Okay. And so you can sort of add some of these</p>	<p style="text-align: right;">80</p> <p>1 Q And using your methodology, you could estimate</p> <p>2 very roughly that economic impact by some of the things</p> <p>3 you said. I think you were talking about when you</p> <p>4 answered the previous question, look at the number of</p> <p>5 jobs, look at the amount of those jobs, the income of</p> <p>6 those jobs, the amount of spending in the county. Those</p> <p>7 are all ways that you could estimate the positive</p> <p>8 economic impact of that project. Correct?</p> <p>9 A Yes.</p> <p>10 Q And so we could, at least in theory, get a very</p> <p>11 rough sense of the economic impact of Denbury's proposed</p> <p>12 CO2 operations. Correct?</p> <p>13 A Yes, one could. My understanding, though, is</p> <p>14 that the public interest issue related to a permit</p> <p>15 application doesn't consider economic impact of other</p> <p>16 activities. It's limited to looking at the impact of</p> <p>17 the proposed permit.</p> <p>18 MR. SENCENBAUGH: Objection, Your Honors.</p> <p>19 That's not responsive. Move to strike that answer.</p> <p>20 JUDGE WALSTON: Any response?</p> <p>21 MR. RILEY: I don't care either way.</p> <p>22 JUDGE WALSTON: Okay. I'll sustain the</p> <p>23 objection.</p> <p>24 Q (BY MR. SENCENBAUGH) Now, Mr. Bost, did you</p> <p>25 consider in your analysis any interaction between</p>
<p style="text-align: right;">79</p> <p>1 together and come up with a figure -- I'm not asking you</p> <p>2 to do it now, but you can come up with a figure that</p> <p>3 represents what you would, I guess, testify as the</p> <p>4 positive economic impact to Montgomery County of</p> <p>5 TexCom's operations?</p> <p>6 A In terms of direct employment, yes.</p> <p>7 Q Okay. Now, Mr. Bost, you're aware that the</p> <p>8 Conroe Field is an active oil and gas field. Correct?</p> <p>9 A I'm aware that it is a relatively active field.</p> <p>10 Q Okay. And you're certainly aware that since</p> <p>11 you've reviewed some of the prefiled testimony in this</p> <p>12 case that oil and gas production has an economic impact</p> <p>13 on Montgomery County. Correct?</p> <p>14 A Yes.</p> <p>15 Q And you've learned since you reviewed some of</p> <p>16 that prefiled testimony that Denbury, who has now</p> <p>17 intervened in this case, has plans to use CO2 to</p> <p>18 initiate enhanced oil and gas recovery in the Conroe</p> <p>19 Field. Correct?</p> <p>20 A Yes.</p> <p>21 Q And you would agree that Denbury's project</p> <p>22 would have some economic impact on Montgomery County.</p> <p>23 Correct?</p> <p>24 A Yes, the continued development and use of that</p> <p>25 field would have economic impact.</p>	<p style="text-align: right;">81</p> <p>1 Denbury's operations and TexCom's proposed operations?</p> <p>2 A No, I did not.</p> <p>3 Q And did you consider in your analysis how</p> <p>4 TexCom's facility might impact the mineral interest</p> <p>5 holders in the Conroe Field that we've discussed this</p> <p>6 morning?</p> <p>7 A I did not address that question.</p> <p>8 Q And if TexCom's disposal operations damage the</p> <p>9 mineral interests of mineral interest holders, that</p> <p>10 would be a negative economic impact of TexCom's</p> <p>11 operations. Correct?</p> <p>12 MR. RILEY: Objection. That's beyond</p> <p>13 scope of this hearing. Mineral interests are not an</p> <p>14 issue, and economic impact of mineral interests, which</p> <p>15 is a corollary to mineral interests, is also not at</p> <p>16 issue. That's determined by your ruling.</p> <p>17 MR. SENCENBAUGH: Your Honors, we're not</p> <p>18 trying to go into this directly, only to the extent that</p> <p>19 this witness has testified that there would be a</p> <p>20 positive economic impact to Montgomery County through</p> <p>21 TexCom's operations, and it's clear that his testimony</p> <p>22 did not consider positive -- possible negative economic</p> <p>23 impacts of TexCom's operations. And so for that limited</p> <p>24 purpose, I think it's a fair question.</p> <p>25 MR. RILEY: It's a -- I'm sorry. I</p>

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82	<p>1 apologize.</p> <p>2 MR. SENCENBAUGH: And specifically, the</p> <p>3 public interest requirements were a part of the remand</p> <p>4 that this -- the ALJs are to consider evidence on for</p> <p>5 this particular remand hearing, Your Honors.</p> <p>6 JUDGE WALSTON: Do you have anything else?</p> <p>7 MR. RILEY: Just briefly. It is still</p> <p>8 about Denbury's mineral interests. No matter how one</p> <p>9 slices it, what counsel is trying to set up is a false</p> <p>10 comparison which the witness testified and the answer</p> <p>11 was stricken because he didn't like it, is that the</p> <p>12 public interest analysis in this case is about the</p> <p>13 public interest incorporated or accompanying the TexCom</p> <p>14 application, not some other interest and particularly</p> <p>15 not the mineral interest.</p> <p>16 MR. SENCENBAUGH: Just one brief response,</p> <p>17 Your Honor. The question was actually about mineral</p> <p>18 interests and mineral interest holders in Montgomery</p> <p>19 County. That's not necessarily related to Denbury.</p> <p>20 Those can be third parties that are obviously not</p> <p>21 Denbury. Denbury is not the mineral interest holder.</p> <p>22 And so if this witness is going to testify about the</p> <p>23 positive economic impact of what TexCom is doing, I</p> <p>24 think it's fair to explore if he's thought about or if</p> <p>25 he's analyzed the possible negative impacts.</p>	84	<p>1 analysis didn't consider the possibility that TexCom's</p> <p>2 operations could damage those minerals?</p> <p>3 MR. RILEY: Objection.</p> <p>4 JUDGE WALSTON: I'll sustain the</p> <p>5 objection.</p> <p>6 MR. SENCENBAUGH: Denbury passes the</p> <p>7 witness, Your Honors.</p> <p>8 JUDGE WALSTON: Okay. Thank you.</p> <p>9 Individual protestants?</p> <p>10 MR. FORSBERG: Yes, Your Honors. Thank</p> <p>11 you.</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. FORSBERG:</p> <p>14 Q Mr. Bost, my name is Kevin Forsberg, and I</p> <p>15 represent a number of individual protestants in this</p> <p>16 matter, and I just have a few questions. You have</p> <p>17 provided in Exhibit 92 some testimony with regards to</p> <p>18 traffic. Is that correct?</p> <p>19 A As a general statement, yes.</p> <p>20 Q Well, do you have a specific opinion or a</p> <p>21 general statement about traffic?</p> <p>22 A No. I express specific opinions relative to</p> <p>23 the positive benefits of providing a disposal facility</p> <p>24 for wastes that are currently going outside of the</p> <p>25 county and the reduced amount of travel that would</p>
83	<p>1 JUDGE WALSTON: I'll sustain the objection</p> <p>2 to the extent your question said "Did you consider</p> <p>3 damage to Denbury's mineral interests" because that is</p> <p>4 beyond the scope. If you just want to ask him the</p> <p>5 question "Did you consider possible negative economic</p> <p>6 impacts as an offset," you could ask that, but we're not</p> <p>7 going to go into damage to Denbury's mineral interests.</p> <p>8 So I'll sustain the objection as the question was</p> <p>9 phrased.</p> <p>10 MR. SENCENBAUGH: Thank you, Your Honor.</p> <p>11 Q (BY MR. SENCENBAUGH) So just to back up a</p> <p>12 little bit, Mr. Bost, you didn't consider in your</p> <p>13 analysis any interaction between Denbury's operations</p> <p>14 and TexCom's proposed operations?</p> <p>15 MR. RILEY: Objection; same question, just</p> <p>16 left out mineral interest as the --</p> <p>17 JUDGE WALSTON: I think he's already asked</p> <p>18 and answered that question, to be honest with you. So</p> <p>19 go ahead and ask it.</p> <p>20 MR. SENCENBAUGH: I'll move on, Your</p> <p>21 Honor.</p> <p>22 MR. RILEY: All right. Thank you.</p> <p>23 Q (BY MR. SENCENBAUGH) And going back to the</p> <p>24 question about actual -- the mineral interest holders in</p> <p>25 the Conroe Field, not Denbury, just to be clear, your</p>	85	<p>1 result of disposing the waste generated. In this case,</p> <p>2 we're speaking specifically of the Class I nonhazardous</p> <p>3 wastes that are currently being disposed of at</p> <p>4 facilities other than publicly owned treatment works or</p> <p>5 through other methods.</p> <p>6 Q What formal education have you had in traffic</p> <p>7 study analysis?</p> <p>8 A When I was at Rice University in graduate</p> <p>9 school, I took an urban economics class that included</p> <p>10 traffic analysis. And as part of a research project I</p> <p>11 did, I looked at mass transportation issues and traffic</p> <p>12 issues and air pollution issues associated with those.</p> <p>13 Q What year was that?</p> <p>14 A That was in 1976 and 1978 time frame.</p> <p>15 Q Okay. So is your formal education related to</p> <p>16 traffic study analysis limited to that one class and</p> <p>17 project in 1976 through '78?</p> <p>18 A Could you repeat the question?</p> <p>19 Q Do you have any additional formal education</p> <p>20 outside of the class and project you just discussed with</p> <p>21 regards to traffic safety analysis?</p> <p>22 A Yes. I have looked at traffic safety analysis</p> <p>23 as a consideration as a risk factor and disposal options</p> <p>24 of hazardous waste and nonhazardous waste, and I've</p> <p>25 continued various review of course materials or</p>

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<p>86</p> <p>1 publications and such in that arena. I've also</p> <p>2 supported and directed work that included traffic safety</p> <p>3 analysis as part of environmental impact assessments for</p> <p>4 various projects.</p> <p>5 Q So the answer to the question "Do you have any</p> <p>6 additional formal education in traffic safety analysis"</p> <p>7 is no, other than the 1976 through '78 period. Is that</p> <p>8 correct?</p> <p>9 A In terms of the word "formal," if it's</p> <p>10 exclusive -- intended to be exclusive of my university</p> <p>11 studies, the answer is yes, I've had no more formal. If</p> <p>12 it includes -- if it can be inclusive of taking</p> <p>13 continuing education classes, then the answer is yes.</p> <p>14 Q Okay. How many continuing education classes</p> <p>15 have you had in traffic safety analysis?</p> <p>16 A I don't know offhand.</p> <p>17 Q More than one?</p> <p>18 A As a part of three or four courses that I took,</p> <p>19 traffic safety was an element of those classes.</p> <p>20 Q I go through your resume rather quickly, and I</p> <p>21 just noticed the word "traffic" doesn't appear anywhere</p> <p>22 in testimony, fields of competence, publications. Would</p> <p>23 you agree with me that traffic is not a major focus of</p> <p>24 yours?</p> <p>25 A Of my --</p>	<p>88</p> <p>1 Q What data did you look at?</p> <p>2 A I looked at TxDOT and U.S. Highway Safety</p> <p>3 Administration statistics.</p> <p>4 Q Now, you state that this TexCom facility would</p> <p>5 presumably result in reductions in number of traffic</p> <p>6 accidents. When you looked at the TxDOT records, did it</p> <p>7 differentiate accidents caused by UIC transport vehicles</p> <p>8 as opposed to any other vehicle?</p> <p>9 A No.</p> <p>10 Q Then how do you know that there would be a</p> <p>11 reduction in the number of accidents if you don't know</p> <p>12 how many accidents there have been?</p> <p>13 A It is fair to say that in traffic studies and</p> <p>14 safety studies you look at categories of vehicles, not</p> <p>15 necessarily where they are coming -- who they belong to</p> <p>16 or such. And based upon the statistical evaluation, you</p> <p>17 come to a conclusion as to probability of an outcome.</p> <p>18 In this case, reduced truck traffic and reduced truck</p> <p>19 traffic distance -- amounts traveled would reduce</p> <p>20 opportunity for accidents.</p> <p>21 Q What kind of vehicles are transporting waste</p> <p>22 out of Montgomery County now?</p> <p>23 A In the context of this analysis that I did,</p> <p>24 we're talking about transporter container trucks</p> <p>25 carrying the Class I nonhazardous liquids.</p>
<p>87</p> <p>1 Q Of your work.</p> <p>2 A -- consulting work? It is a minor element,</p> <p>3 yes.</p> <p>4 Q On Page 22 of Exhibit 92, you talk about -- I</p> <p>5 guess let me rephrase that.</p> <p>6 For Lines 15 through 21, is that pretty</p> <p>7 much your opinion with regards to traffic, that the</p> <p>8 TexCom facility would reduce truck traffic along major</p> <p>9 routes and thus decrease accidents and injuries and risk</p> <p>10 of death and spills?</p> <p>11 A It is a statement, in my opinion, relative to</p> <p>12 the specific issue and the scope of that particular</p> <p>13 evaluation as discussed on Page 22.</p> <p>14 Q What did you review to come to that conclusion?</p> <p>15 A I considered the distances currently traversed</p> <p>16 by waste within Montgomery County that is now going</p> <p>17 outside the county that could be disposed of at the</p> <p>18 proposed injection well if the facility were permitted</p> <p>19 and looked at the reduced transportation associated with</p> <p>20 disposal at that well.</p> <p>21 Q Have you run any review of the number of</p> <p>22 vehicles that are traveling on any roads in Montgomery</p> <p>23 County?</p> <p>24 A Yes, I did look at some data regarding</p> <p>25 preferred routes and accidents along those routes.</p>	<p>89</p> <p>1 Q How large are those vehicles?</p> <p>2 A They can vary in size, but 20,000 gallons is</p> <p>3 not unusual for the larger ones.</p> <p>4 Q Do you believe that's the only type of vehicle</p> <p>5 that carries Class I material out of Montgomery County</p> <p>6 today?</p> <p>7 A No.</p> <p>8 Q What other kinds of vehicles transport that</p> <p>9 material?</p> <p>10 A There may be smaller vehicles.</p> <p>11 Q How many Class I UIC spills have occurred due</p> <p>12 to vehicles taking waste out of Montgomery County --</p> <p>13 Class I waste out of Montgomery County?</p> <p>14 A I don't know.</p> <p>15 Q How can you conclude that there will be a</p> <p>16 reduction in spills if you don't know how many spills</p> <p>17 there have been?</p> <p>18 A The conclusion I reached was that there would</p> <p>19 be reduced risk of spills, and that was a one-third</p> <p>20 reduction if you assume the proposed facility absorbs</p> <p>21 the one-third of the amount of waste currently being</p> <p>22 generated within this band of nonhazardous waste that we</p> <p>23 examined for the purpose of this illustrative</p> <p>24 evaluation.</p> <p>25 Q Is it your assumption that the only wastes that</p>

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90	<p>1 the TexCom facility is going to take is waste that's</p> <p>2 generated within Montgomery County?</p> <p>3 A No.</p> <p>4 Q So isn't there going to be now traffic coming</p> <p>5 into Montgomery County carrying waste to the TexCom</p> <p>6 facility?</p> <p>7 A The facility can take waste from outside of</p> <p>8 Montgomery County in terms of its prime market that</p> <p>9 would be within Montgomery County. And the issues I was</p> <p>10 asked to address were those that were raised in terms of</p> <p>11 the benefit to Montgomery County of the facility being</p> <p>12 located within Montgomery County.</p> <p>13 Q Yes or no, do you believe that waste is going</p> <p>14 to come to the Montgomery County TexCom facility from</p> <p>15 outside of Montgomery County?</p> <p>16 A Do I believe? I believe that they are allowed</p> <p>17 to take it. And so it's a function of what happens. I</p> <p>18 don't know whether they will be fully absorbed by</p> <p>19 Montgomery County, but it's reasonably likely that they</p> <p>20 may.</p> <p>21 Q Reasonably likely that they may?</p> <p>22 A Yes, because of the amount of waste within</p> <p>23 Montgomery County and the large volume there and the</p> <p>24 potential cost advantage of a facility that's proximate</p> <p>25 to the generators of Montgomery County.</p>	92	<p>1 Q Okay. Well, how much air pollution is being</p> <p>2 caused today by the transport of materials into --</p> <p>3 materials to facilities outside Montgomery County?</p> <p>4 A I did not complete a calculation of the</p> <p>5 quantity. It is apparent that if there's a reduction of</p> <p>6 transportation by a third, then there will be a</p> <p>7 reduction of emissions.</p> <p>8 Q But we don't know if there's going to be a</p> <p>9 reduction in transportation by a third because</p> <p>10 transportation going out of Montgomery County could be</p> <p>11 simply replaced by transportation coming into Montgomery</p> <p>12 County. Isn't that correct?</p> <p>13 A As a hypothetical, yes.</p> <p>14 Q Well, that's sort of what you deal in, isn't</p> <p>15 it, hypotheticals?</p> <p>16 A I don't understand the question.</p> <p>17 Q I'm sure you don't.</p> <p>18 MR. RILEY: Objection to the side comment.</p> <p>19 (Simultaneous discussion)</p> <p>20 JUDGE WALSTON: -- the sidebar comments,</p> <p>21 Mr. Forsberg.</p> <p>22 Q (BY MR. FORSBERG) What routes are the major</p> <p>23 routes in Montgomery County?</p> <p>24 A I didn't hear the question.</p> <p>25 Q What routes are the major routes in Montgomery</p>
91	<p>1 Q Well, isn't the market going to drive what</p> <p>2 facilities decide where to dispose of their waste?</p> <p>3 A Yes.</p> <p>4 Q So isn't it possible that producers in Harris</p> <p>5 County, a much larger county, are going to need to</p> <p>6 dispose of their waste, and they may find it cheaper to</p> <p>7 ship to Montgomery County?</p> <p>8 A Yes, it's possible.</p> <p>9 Q So wouldn't that potentially cause an increase</p> <p>10 in traffic into the county?</p> <p>11 A It is possible.</p> <p>12 Q Have you taken any of that into consideration</p> <p>13 in your traffic analysis?</p> <p>14 A No, I did not.</p> <p>15 Q You said a reduction in the risk of deaths.</p> <p>16 How many deaths have been caused in Montgomery County</p> <p>17 due to waste being taken out of Montgomery County?</p> <p>18 A I don't know.</p> <p>19 Q You state there will be a reduction in the</p> <p>20 associated air pollution which contributes to ozone</p> <p>21 formation and energy consumption. Is that a correct</p> <p>22 statement?</p> <p>23 A Yes.</p> <p>24 Q How much --</p> <p>25 A That's in the context of the issue I evaluated.</p>	93	<p>1 County? You refer in your testimony to something called</p> <p>2 major routes. Do you know what those are?</p> <p>3 A I-45 is a major route, and then some of the</p> <p>4 U.S. highways that cross the county were also among</p> <p>5 those that I considered. I also considered, if I</p> <p>6 remember correctly, a couple farm-to-market roads in</p> <p>7 terms of looking at statistics.</p> <p>8 Q Is there Class I material being generated in</p> <p>9 Montgomery County that is being generated in places not</p> <p>10 on some of these major roads?</p> <p>11 A I don't recall if all the facilities that I</p> <p>12 included in my evaluation were all directly on one of</p> <p>13 those major routes.</p> <p>14 Q So if there's facilities not on major routes</p> <p>15 and you create a disposal facility within Montgomery</p> <p>16 County, could you foresee or hypothetically see that</p> <p>17 vehicles could be traversing rural roads to get to that</p> <p>18 facility in Montgomery County, the TexCom facility?</p> <p>19 A I think that's a different question of what I</p> <p>20 understood you to ask the one before. In terms of</p> <p>21 traffic to the facility, I believe that's been addressed</p> <p>22 in a previous hearing, and I did not consider</p> <p>23 specifically the traffic along the route to the proposed</p> <p>24 facility in terms of changes in traffic. What I did</p> <p>25 instead was look at the traffic as a whole answering the</p>

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94	<p>1 question regarding the benefit to Montgomery County of</p> <p>2 the facility.</p> <p>3 Q But your testimony is generally that there</p> <p>4 would be a reduction in the risk of death or injury</p> <p>5 based upon a third of the traffic being kept in</p> <p>6 Montgomery County. Is that correct?</p> <p>7 A Based upon a third of the transportation,</p> <p>8 distance -- average distance traveled being reduced.</p> <p>9 Q But you've only taken that into consideration</p> <p>10 in regards to the major roads. Is that correct?</p> <p>11 A I looked at it from the perspective of, you</p> <p>12 know, the distances traveled and the fact that those</p> <p>13 distances traveled and the accident frequency is based</p> <p>14 upon primarily our knowledge of major thoroughfares.</p> <p>15 Q Okay. So you didn't take into consideration</p> <p>16 smaller roads, rural roads, smaller state highways that</p> <p>17 producers in Montgomery County could use to get to the</p> <p>18 TexCom facility?</p> <p>19 A That's not -- that's not correct. I looked at</p> <p>20 accident statistics on some of the farm-to-market roads</p> <p>21 that was inclusive of the farm-to-market road that went</p> <p>22 by the proposed TexCom facility, and as you put it, the</p> <p>23 smaller state highways.</p> <p>24 I did not do a detailed analysis of</p> <p>25 alternative routes. What I did was a very</p>	96	<p>1 Harris County.</p> <p>2 Q Okay. I'm going to move on. Do you have -- do</p> <p>3 you have an opinion as to the safety of the entrance or</p> <p>4 exit from the proposed TexCom facility?</p> <p>5 A No, I do not answer the question of entrance or</p> <p>6 exit of the TexCom facility. I understood that was</p> <p>7 addressed in the previous hearing.</p> <p>8 Q Would vehicles idling at the TexCom facility</p> <p>9 create air pollution problems potentially?</p> <p>10 A As a hypothetical -- as a hypothetical, idling</p> <p>11 of vehicles will generate emissions.</p> <p>12 Q Does that emission damage the ozone?</p> <p>13 A As a hypothetical, CO2 emissions or various</p> <p>14 types of emissions can affect ozone in terms of whether</p> <p>15 a particular activity is significant because ozone</p> <p>16 damage -- I didn't do the analysis in the context of the</p> <p>17 entrance or exit of the TexCom facility.</p> <p>18 Q I'm not even talking about the entrance or</p> <p>19 exit. I'm just talking about generally. Is there going</p> <p>20 to be a reduction in the ozone facility -- or ozone</p> <p>21 damage because the TexCom facility exists?</p> <p>22 MR. RILEY: I'm sorry. I'm going to have</p> <p>23 to ask counsel to clarify his question. There are two</p> <p>24 types of ozone: Atmospheric ozone, which typically we</p> <p>25 think of as being damaged.</p>
95	<p>1 straightforward on the face evaluation, that is, if the</p> <p>2 facility receives one-third of the waste currently being</p> <p>3 transported out of the county and that results in</p> <p>4 substantial reduction of the miles traveled, the</p> <p>5 probability of risk and specifically risks in terms of</p> <p>6 accidents or spills, is reduced.</p> <p>7 Q But you can't, as you sit here today, say for</p> <p>8 certain that the miles will be reduced?</p> <p>9 A Based upon the benefit to Montgomery County in</p> <p>10 terms of there being a facility in Montgomery County to</p> <p>11 receive Montgomery County waste, there will be a reduced</p> <p>12 risk of spills and accidents.</p> <p>13 Q Where is the next closest underground injection</p> <p>14 facility to the TexCom proposed site?</p> <p>15 A If I remember correctly, the next closest is</p> <p>16 Liberty County.</p> <p>17 Q So would Harris County be closer to Montgomery</p> <p>18 or Liberty County? I think a map would show that Harris</p> <p>19 County is closer.</p> <p>20 A You're asking me the distance to the closest</p> <p>21 disposal facility.</p> <p>22 Q Okay.</p> <p>23 A I stated that I believed it was in Liberty</p> <p>24 County, but the one that -- the two that are candidate</p> <p>25 facilities are in Harris County at the southern end of</p>	97	<p>1 (Simultaneous discussion)</p> <p>2 MR. FORSBERG: I understand the science.</p> <p>3 Let me reask the question.</p> <p>4 MR. RILEY: Okay. That will be fair.</p> <p>5 Q (BY MR. FORSBERG) Your testimony states that</p> <p>6 there will be a reduction in the associated air</p> <p>7 pollution which contributes to ozone formation on</p> <p>8 Page 22 approximately Line 19 and 20. Did you do an</p> <p>9 analysis on ozone reduction from the proposed TexCom</p> <p>10 facility?</p> <p>11 A I looked at the air emissions associated with</p> <p>12 transportation. I looked at, you know, the types of</p> <p>13 activities associated with the proposed UIC well. I</p> <p>14 considered the emissions associated with the proposed</p> <p>15 facility to be relatively small in comparison with those</p> <p>16 associated with the truck transportation of the waste in</p> <p>17 terms of the CO2 emissions. I did note in some cases --</p> <p>18 Q Is that a yes? You did an analysis of the</p> <p>19 ozone?</p> <p>20 A I don't understand your question in terms of</p> <p>21 what you mean by "analysis." I did address it. If</p> <p>22 you're asking whether I did specific computations, I</p> <p>23 just answered that. I didn't. I considered -- after I</p> <p>24 reviewed their proposed operations, I did not do</p> <p>25 quantitative calculations.</p>

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98	<p>1 Q Without those calculations, how can you be so</p> <p>2 sure that -- you know, that the resulting emissions from</p> <p>3 the vehicles coming into the TexCom facility wouldn't</p> <p>4 cause more ozone damage than the vehicles leaving the</p> <p>5 county?</p> <p>6 A One does not --</p> <p>7 MR. RILEY: Objection. I'm sorry.</p> <p>8 JUDGE WALSTON: Hang on.</p> <p>9 MR. RILEY: The objection is -- I still</p> <p>10 don't understand the term "ozone damage."</p> <p>11 MR. FORSBERG: I'm using his term from his</p> <p>12 testimony. He says "ozone formation."</p> <p>13 MR. RILEY: That's not "ozone damage,"</p> <p>14 Counselor. You said "ozone damage." I'm trying to</p> <p>15 understand your terminology.</p> <p>16 MR. FORSBERG: Ozone formation.</p> <p>17 JUDGE WALSTON: Why don't you restate the</p> <p>18 question -- I've kind of forgot what the question was --</p> <p>19 using "ozone formation."</p> <p>20 MR. FORSBERG: Okay.</p> <p>21 Q (BY MR. FORSBERG) Is it the same for ozone</p> <p>22 formation that you did not do any calculations to</p> <p>23 determine how the TexCom facility would impact ozone</p> <p>24 formation?</p> <p>25 A In terms of calculations, no.</p>	100	<p>1 vehicles are going to be coming into the county from the</p> <p>2 TexCom -- to the TexCom facility. Correct?</p> <p>3 A The basis of that evaluation was looking at the</p> <p>4 benefit to Montgomery --</p> <p>5 Q Do you know if there's going to be --</p> <p>6 JUDGE WALSTON: Mr. Bost, just answer his</p> <p>7 question, if you can answer his question.</p> <p>8 A I'm sorry. I don't know as of -- in terms of</p> <p>9 looking into a crystal ball what the amount of waste</p> <p>10 would be hauled into the county. The purpose of my</p> <p>11 evaluation was to look at the benefit to Montgomery</p> <p>12 County from accepting waste generated within Montgomery</p> <p>13 County and this context.</p> <p>14 Q (BY MR. FORSBERG) But isn't there a public</p> <p>15 interest consideration given to the increase influx of</p> <p>16 waste from outside the county? Shouldn't that be a</p> <p>17 consideration?</p> <p>18 A It is -- you know, one can look at that as a</p> <p>19 consideration. In terms of what I indicated earlier, I</p> <p>20 saw it was reasonably likely that most of the waste</p> <p>21 disposed at the facility will come from within the</p> <p>22 county. As a hypothetical, one can consider the</p> <p>23 alternative of waste coming in from out of the county.</p> <p>24 The evaluation I did was looking at the specific</p> <p>25 scenario that issues had been raised about.</p>
99	<p>1 Q How do you know then that there will be a more</p> <p>2 substantial impact on ozone formation from vehicles</p> <p>3 traveling out of the county than the proposed vehicle</p> <p>4 activity at the proposed TexCom site?</p> <p>5 A I know it from my experience and from my</p> <p>6 knowledge of the different activities that contribute to</p> <p>7 emissions that collectively contribute to ozone</p> <p>8 formation. The proposed facilities associated with the</p> <p>9 UIC injection well and in my review of what was proposed</p> <p>10 for the TexCom facility are minor emitters of air</p> <p>11 emissions.</p> <p>12 Other alternative disposal facilities</p> <p>13 would have much greater air emissions. Because of the</p> <p>14 complexity of doing that in a quantitative basis,</p> <p>15 comparing the TexCom facility with all the other</p> <p>16 candidate facilities, I made a comment that there in</p> <p>17 general would be a reduction. And as I indicated in an</p> <p>18 earlier answer, I recognized the greatest reduction that</p> <p>19 was directly related to the proposed project was</p> <p>20 associated with the hauling.</p> <p>21 Q And, in fact, you make a conclusion on Page 24,</p> <p>22 I believe, that there will be an annual reduction of</p> <p>23 475,000 gallons of diesel and a substantial reduction in</p> <p>24 the amount of air emissions from current out-of-county</p> <p>25 disposal. Again, however, you don't know how many</p>	101	<p>1 Q So is it your testimony that there's no issue</p> <p>2 with regards to concern to Montgomery County about waste</p> <p>3 coming from out of the county to the TexCom facility?</p> <p>4 A One can raise all sorts of issues.</p> <p>5 Q Is that a yes or a no?</p> <p>6 A I'm not saying that there are no hypothetical</p> <p>7 issues. In terms of my opinions in that particular</p> <p>8 answer, I was requested to examine the question from the</p> <p>9 perspective of Montgomery County waste.</p> <p>10 Q Let me try that one more time. You are</p> <p>11 provided as an expert in public interest. Correct?</p> <p>12 A Yes.</p> <p>13 Q Is part of your analysis in the public interest</p> <p>14 of Montgomery County to consider the waste that comes</p> <p>15 from outside the county to the proposed TexCom facility?</p> <p>16 A It is, and so I can answer that question if</p> <p>17 you'd like for me to.</p> <p>18 Q I would love it.</p> <p>19 A Okay.</p> <p>20 MR. RILEY: Objection to the sidebar.</p> <p>21 MR. FORSBERG: He asked me if I'd like him</p> <p>22 to answer the question, and I said I would love it.</p> <p>23 JUDGE WALSTON: Go ahead, answer the</p> <p>24 question, although I thought you already did, but go</p> <p>25 ahead.</p>

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102	<p>1 MR. FORSBERG: I thought he did, too, but</p> <p>2 if he wants to --</p> <p>3 MR. RILEY: All right, Judge. Can we have</p> <p>4 a rule that -- at least can we be instructed to limit</p> <p>5 the sidebar comment of the lawyers? It's very</p> <p>6 distracting.</p> <p>7 MR. FORSBERG: Your Honor, I think the</p> <p>8 Judges have control over the Court. I don't think</p> <p>9 Mr. Riley needs to --</p> <p>10 MR. RILEY: I think it's an appropriate</p> <p>11 instruction given Mr. Forsberg's behavior.</p> <p>12 JUDGE WALSTON: Well, all attorneys should</p> <p>13 know professionalism, to avoid any sidebar comments.</p> <p>14 But just so I'm clear, though, I'm not sure what</p> <p>15 question he's being asked to answer now, though,</p> <p>16 because I thought --</p> <p>17 MR. FORSBERG: Well, I thought he answered</p> <p>18 the question, and then he wanted to add to it. And he</p> <p>19 has a tendency to add, which I understand experts</p> <p>20 sometimes do, and I'm just looking for simple answers.</p> <p>21 JUDGE WALSTON: Okay. But he said he</p> <p>22 wanted to answer the question.</p> <p>23 MR. FORSBERG: Okay.</p> <p>24 A Yeah, my -- you know, I previously answered a</p> <p>25 question what was I evaluating in the context of this</p>	104	<p>1 distances will be disposed of at this well, which means</p> <p>2 that from basic economics there will be a greater</p> <p>3 likelihood of waste currently generated within</p> <p>4 Montgomery County being disposed of within Montgomery</p> <p>5 County. That would have the benefits I previously</p> <p>6 discussed.</p> <p>7 If you assumed that the waste generated</p> <p>8 within Montgomery County continues to go those long</p> <p>9 distances, then the waste that is proximate to</p> <p>10 Montgomery County would likely go there, and those</p> <p>11 travel distances are still less than those that are</p> <p>12 currently associated with longer distances.</p> <p>13 Q (BY MR. FORSBERG) And would you agree with me</p> <p>14 that the TexCom facility can't even handle all the waste</p> <p>15 in Montgomery County. Correct?</p> <p>16 A That is correct.</p> <p>17 Q It can't -- it's barely a third or it is a</p> <p>18 third?</p> <p>19 A In terms of the 2007-2008 generation of the</p> <p>20 Class I nonhazardous waste reduced to those wastes that</p> <p>21 are currently not going to the POTWs, that's correct,</p> <p>22 it's about a third. It is actually smaller than the</p> <p>23 total amount of waste that it potentially could receive</p> <p>24 that are being generated within Montgomery County.</p> <p>25 Q Well, wouldn't it be in the public interest</p>
103	<p>1 answer on -- I believe it's page -- is it 23?</p> <p>2 JUDGE WALSTON: 24.</p> <p>3 A -- 24 that we were talking about, whatever</p> <p>4 point it was. And then you asked is there an issue that</p> <p>5 could be raised about the air emissions associated with</p> <p>6 and the traffic issues associated with a hypothetical of</p> <p>7 the waste coming from outside the county. So as a</p> <p>8 hypothetical, one can look at -- if you assume that the</p> <p>9 facility wasn't consumed by the waste generated within</p> <p>10 Montgomery County, from a market perspective, where</p> <p>11 would that waste come from? It would primarily come</p> <p>12 from the immediate adjacent counties. Harris County you</p> <p>13 spoke of. That's obviously one. But other</p> <p>14 industrialized counties in the area, Chambers, Liberty,</p> <p>15 Fort Bend, Brazoria, also have a heavy amount of</p> <p>16 industrialization and wastes that are being generated.</p> <p>17 If there were adequate capacity for waste</p> <p>18 disposal within this Houston-Galveston, Montgomery</p> <p>19 County area, then waste wouldn't be hauled to Jefferson</p> <p>20 County. Two-thirds of the waste or 75 percent of the</p> <p>21 waste generated within this category of evaluation I did</p> <p>22 is currently going to Jefferson County. And so if you</p> <p>23 looked at the economics of where wastes would go in the</p> <p>24 future after the permitting of this proposed facility,</p> <p>25 it's more likely that waste currently going longer</p>	105	<p>1 then that Montgomery County have facilities that can</p> <p>2 handle a much higher percentage of its waste rather than</p> <p>3 this rather small facility that can handle a third?</p> <p>4 A From a planning perspective, it is important to</p> <p>5 realize that one cannot generally build a single</p> <p>6 facility or a couple of facilities to take care of all</p> <p>7 the needs of the future. So planning processes usually</p> <p>8 entail anticipation of multiple facilities being created</p> <p>9 to address it. The TexCom facility would address a need</p> <p>10 within Montgomery County and would help reduce the</p> <p>11 amount of wastes currently being disposed of outside the</p> <p>12 county.</p> <p>13 Q How many businesses have you spoken to in</p> <p>14 Montgomery County that are desiring a local facility to</p> <p>15 dispose of Class I material?</p> <p>16 A I have not specifically discussed the issue of</p> <p>17 the TexCom permit with any businesses.</p> <p>18 Q Well, wouldn't it be easy to confirm by just</p> <p>19 contacting some of the larger generators as to whether</p> <p>20 such a facility was really wanted by these generators?</p> <p>21 A I did not specifically do that. It's my</p> <p>22 understanding that in TexCom's consideration of</p> <p>23 purchasing this facility and planning it, they have</p> <p>24 evaluated the market and the demand there and have</p> <p>25 concluded there is a substantial market there and also</p>

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106	<p>1 alternatives within Montgomery County if they don't</p> <p>2 immediately receive waste from some of the major</p> <p>3 disposers.</p> <p>4 Q So you haven't actually confirmed an actual</p> <p>5 need for this facility with businesses or generators in</p> <p>6 Montgomery County?</p> <p>7 A I have evaluated the need from the perspective</p> <p>8 of volume being generated and where it's currently</p> <p>9 going. I have not discussed it with individual</p> <p>10 companies.</p> <p>11 Q Have you ever testified that a UIC I -- Class I</p> <p>12 well was not in the public interest?</p> <p>13 A I'm sorry. What was the question?</p> <p>14 Q Have you ever testified in any manner that a</p> <p>15 Class I UIC well was not in the public interest?</p> <p>16 A No.</p> <p>17 Q How many times have you testified about Class I</p> <p>18 UIC wells?</p> <p>19 A I have discussed -- I have not testified in a</p> <p>20 UIC permit application before.</p> <p>21 Q Have you ever testified about a UIC well in any</p> <p>22 other context?</p> <p>23 A I have discussed it in the context of other</p> <p>24 disposal alternatives for specific projects.</p> <p>25 Q Do you believe that there is ever a safer</p>	108	<p>1 For any given waste, you have to look at</p> <p>2 distances traveled, economics and other factors and the</p> <p>3 particular nature of those wastes.</p> <p>4 Q (BY MR. FORSBERG) In terms of a UIC well</p> <p>5 application, is the public interest to be considered</p> <p>6 only that of the county in Montgomery, or should more --</p> <p>7 a larger area be considered?</p> <p>8 A That's a good question. The answer, I believe,</p> <p>9 is the public interest goes beyond just Montgomery</p> <p>10 County. It's in the context of permitting. The public</p> <p>11 interest can be examined on a statewide basis, a</p> <p>12 regional basis. The issues that have been raised and</p> <p>13 that I was asked to address with my primary testimony</p> <p>14 was those associated with Montgomery County.</p> <p>15 Q And if it is to extend outside of Montgomery</p> <p>16 County, if the disposal of waste that's going on today</p> <p>17 is benefiting surrounding counties, isn't creating the</p> <p>18 TexCom facility in Montgomery County then going to hurt</p> <p>19 those facilities in the surrounding counties?</p> <p>20 A No. All the counties that we're talking about</p> <p>21 where wastes are currently disposed of are projected to</p> <p>22 have population increases and expansions of industrial</p> <p>23 activities, and there will be a growing need for</p> <p>24 additional disposal capacity in years to come.</p> <p>25 In terms of the most efficient way of</p>
107	<p>1 alternative method than a UIC disposal well for</p> <p>2 disposing of these types of wastes?</p> <p>3 A When you speak of these types of wastes, no.</p> <p>4 If it is a UIC well, always the preferred option for</p> <p>5 every waste, no.</p> <p>6 Q So in your understanding, there's never going</p> <p>7 to be a situation where a Class I UIC well is not the</p> <p>8 preferred --</p> <p>9 MR. RILEY: Objection.</p> <p>10 Q -- method of disposal?</p> <p>11 MR. RILEY: That's not his -- that's not</p> <p>12 the answer he just gave.</p> <p>13 JUDGE WALSTON: He can clarify it if he</p> <p>14 needs to. So I'll overrule the objection.</p> <p>15 A The answer is -- if I understand how you</p> <p>16 structured your question -- is no. When one looks at</p> <p>17 alternative disposal options for given waste and you</p> <p>18 look at multiple factors in terms of just the question</p> <p>19 of the technology of UIC wells and their track record</p> <p>20 and the releases associated with UIC wells versus the</p> <p>21 releases and other issues associated with other</p> <p>22 alternative disposal methods, just doing a comparison on</p> <p>23 that basis, UIC wells have the best track record. And</p> <p>24 EPA studies and other studies have reached a conclusion</p> <p>25 that they are the safest way of disposal.</p>	109	<p>1 disposing of waste, in terms of the most sustainable way</p> <p>2 of disposing of waste, doing so most proximate to where</p> <p>3 the waste is generated is, as a general concept,</p> <p>4 preferred. One obviously has to look at the different</p> <p>5 alternatives that exist in a particular area.</p> <p>6 The proposed TexCom UIC well provides an</p> <p>7 approximate location within Montgomery County, has the</p> <p>8 benefit even if you assume that existing disposers are</p> <p>9 continuing to dispose of elsewhere, that it creates</p> <p>10 additional capacity for the growth of the county and the</p> <p>11 waste that will be generated within the county.</p> <p>12 Q So if TexCom's facility is up and operational</p> <p>13 in 2011 and it begins to take in 33 percent of the waste</p> <p>14 generated in 2011 in Montgomery County, are you saying</p> <p>15 that the current facilities would not suffer any</p> <p>16 economic setback as a result of the TexCom operation?</p> <p>17 A Competition is good.</p> <p>18 Q So the answer is --</p> <p>19 A And the answer is that with just in the next</p> <p>20 two years, if there's a substantial increase of waste</p> <p>21 being generated, there's also opportunities for wastes</p> <p>22 that are currently being disposed of in less desirable</p> <p>23 methods to be disposed of at these other facilities.</p> <p>24 Q And as you say, competition is good. So if</p> <p>25 Liberty County, for example, needs to compete with</p>

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110	<p>1 Montgomery County, what's Liberty County likely going to</p> <p>2 do in regards to UIC waste disposal? It's going to make</p> <p>3 a better price. Right?</p> <p>4 A They may make a better price. They may also be</p> <p>5 marketing additional customers.</p> <p>6 Q Which may be attractive to people in other</p> <p>7 counties or even Montgomery County if that facility</p> <p>8 beats TexCom's price?</p> <p>9 A As a hypothetical.</p> <p>10 Q Now, you make a calculation that there will be</p> <p>11 some sales tax revenue increase for, I guess -- well, as</p> <p>12 a result of the TexCom facility. Is that correct?</p> <p>13 A Yes.</p> <p>14 Q I believe that's on Page 22 as well, Lines 5</p> <p>15 through 10. Who collects the sales tax increase that</p> <p>16 you're suggesting will occur?</p> <p>17 A The county collects the tax.</p> <p>18 Q Have you done any calculation as to the</p> <p>19 potential cost to the county in regards to</p> <p>20 infrastructure, roads, as a result of the proposed</p> <p>21 TexCom facility?</p> <p>22 A I have not looked at there being a need for any</p> <p>23 additional work other than what was already anticipated</p> <p>24 in the planning in the development of the county.</p> <p>25 Q Okay. If there was testimony or evidence that</p>	112	<p>1 improvements and what potential impact this may have on</p> <p>2 the county?</p> <p>3 A I'm not aware of any improvements being</p> <p>4 required and, therefore, I didn't consider them.</p> <p>5 MR. FORSBERG: I'll pass the witness.</p> <p>6 Thank you.</p> <p>7 JUDGE WALSTON: Okay. Mr. Walker, do you</p> <p>8 know how long you're going to be? We've been going into</p> <p>9 the lunch hour.</p> <p>10 MR. WALKER: I expect we ought to break</p> <p>11 for lunch, Your Honor.</p> <p>12 JUDGE WALSTON: Why don't we go ahead and</p> <p>13 do that then. We'll take a lunch break. We'll be back</p> <p>14 at 1:30.</p> <p>15 MR. RILEY: Thank you.</p> <p>16 JUDGE WALSTON: We'll go off the record.</p> <p>17 (Recess: 12:30 p.m. to 1:31 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
111	<p>1 major changes would need to be done to the roads around</p> <p>2 the proposed TexCom facility that would be the county's</p> <p>3 responsibility, would that be something you would want</p> <p>4 to consider in regards to this increased sales tax</p> <p>5 revenue and how it might impact the county?</p> <p>6 A In terms of road improvement, it could be a</p> <p>7 combination of county and the state.</p> <p>8 Q Okay.</p> <p>9 A There's also federal contributions, depending</p> <p>10 upon the type and nature of the project. And Montgomery</p> <p>11 County as well as other counties in the area have</p> <p>12 transportation studies that anticipate further</p> <p>13 development improvements and expansions of capacity of</p> <p>14 roads with projected population growth and industrial</p> <p>15 development of the county.</p> <p>16 Q Do you know if any such plans exist with the</p> <p>17 roads surrounding the TexCom facility?</p> <p>18 A They were inclusive of the roads in that area,</p> <p>19 yes.</p> <p>20 Q Okay. But do you know what improvements, if</p> <p>21 any, might be needed to make the TexCom facility</p> <p>22 accessible to truck traffic?</p> <p>23 A I'm not aware of any improvements required at</p> <p>24 the present time.</p> <p>25 Q Okay. And you haven't considered any of those</p>	113	<p>1 AFTERNOON SESSION</p> <p>2 TUESDAY, JUNE 15, 2010</p> <p>3 (1:31 p.m.)</p> <p>4 JUDGE EGAN: All right. Is everybody</p> <p>5 ready to proceed? We're reconvening in SOAH Docket</p> <p>6 No. 582-07-2673 and 582-07-2674. Mr. Post, you're still</p> <p>7 under -- Bost. I'm sorry.</p> <p>8 WITNESS BOST: Bost.</p> <p>9 JUDGE EGAN: Bost? I knew I was going to</p> <p>10 do that wrong.</p> <p>11 Mr. Bost, you're still under oath.</p> <p>12 And, Mr. Walker, did you have any</p> <p>13 cross-examination?</p> <p>14 MR. WALKER: Thank you, Your Honor.</p> <p>15 PRESENTATION ON BEHALF OF TEXCOM GULF DISPOSAL, LLC</p> <p>16 (CONTINUED)</p> <p>17 RICHARD CARROLL BOST,</p> <p>18 having been previously duly sworn, continued to testify</p> <p>19 as follows:</p> <p>20 CROSS-EXAMINATION</p> <p>21 BY MR. WALKER:</p> <p>22 Q Mr. Bost, I think you and I have met</p> <p>23 previously. Is that correct?</p> <p>24 A Yes.</p> <p>25 Q Let me ask you, sir, for what purpose were you</p>

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114	<p>1 retained by TexCom in this matter?</p> <p>2 A Through a system by addressing certain issues</p> <p>3 that have been raised and serve as -- testify as a</p> <p>4 consultant and then a testifying expert.</p> <p>5 Q Okay. What issues would those be?</p> <p>6 A Issues related to the public interest matters</p> <p>7 that have been raised in the context of the TexCom</p> <p>8 permit application.</p> <p>9 Q All right. So would it be fair to state that</p> <p>10 you're here to propose or to offer some expert testimony</p> <p>11 in areas pertaining to the public interest of the TexCom</p> <p>12 application?</p> <p>13 A Yes.</p> <p>14 Q All right. Mr. Bost, you've used the word</p> <p>15 "hypothetical" various times this previous morning in</p> <p>16 your testimony. What is your understanding of a</p> <p>17 hypothetical question or hypothetical proposition?</p> <p>18 A Well, hypothetical is a set of assumptions</p> <p>19 that -- which may or may not be realistic.</p> <p>20 Q Okay. And what would your statement be as to</p> <p>21 what is a hypothetical analysis?</p> <p>22 A I don't know exactly what one necessarily means</p> <p>23 with the phraseology, but if one addresses a particular</p> <p>24 hypothetical and analyzes the -- a situation associated</p> <p>25 with a hypothetical situation, I would say that might</p>	116	<p>1 Q Is your testimony today based on some</p> <p>2 hypothetical considerations?</p> <p>3 A Yes.</p> <p>4 Q It is a fact, is it not, that TexCom has filed</p> <p>5 an application to put into operation a wastewater</p> <p>6 injection well?</p> <p>7 A Yes. And inherently, in addressing and</p> <p>8 evaluating that proposal, we're assuming that a permit</p> <p>9 would be granted.</p> <p>10 Q Very well. It is a fact, also, that there are</p> <p>11 Class I wastewater generators in Montgomery County,</p> <p>12 Texas. Is that correct?</p> <p>13 A Yes.</p> <p>14 Q Is it not a fact that every one of those Class</p> <p>15 I wastewater generators are presently disposing of their</p> <p>16 waste by some means?</p> <p>17 A Presumably, that's correct, yes.</p> <p>18 Q Why do you say "presumably"?</p> <p>19 A Well, I don't know for a fact that there's --</p> <p>20 everyone generating what would be considered Class I has</p> <p>21 a -- Class I non-hazardous waste is actually disposing</p> <p>22 of their waste in Montgomery County. But for purposes</p> <p>23 of our discussion, I may think it's a fair assumption</p> <p>24 for what we're trying to look at.</p> <p>25 Q Okay.</p>
115	<p>1 represent a hypothetical analysis.</p> <p>2 Q Okay. So would you agree with me, then, that a</p> <p>3 hypothetical situation may or may not exist?</p> <p>4 A Yes.</p> <p>5 Q Let me ask you this, Mr. Bost: Isn't your</p> <p>6 entire prefiled testimony essentially a hypothetical</p> <p>7 analysis?</p> <p>8 A I wouldn't say it's strictly a hypothetical</p> <p>9 analysis because we are here looking at the proposed</p> <p>10 permit for -- to allow operation of an existing well.</p> <p>11 It's a very concrete existing facility that's not fully</p> <p>12 completed, but it's an existing well. It isn't a</p> <p>13 construct of an existing regulatory program. And we</p> <p>14 know there are existing generators of waste, and so</p> <p>15 we're looking in the context of the situation. So those</p> <p>16 are not hypothetical facts.</p> <p>17 Q Okay. Well, it goes without saying, I suppose,</p> <p>18 that when constructing a hypothetical representation,</p> <p>19 you have to base some of your study upon existing facts.</p> <p>20 Is that correct?</p> <p>21 A Not all hypotheticals are based upon existing</p> <p>22 facts.</p> <p>23 Q Is your testimony today based on some existing</p> <p>24 facts?</p> <p>25 A Yes.</p>	117	<p>1 A I don't preclude the possibility we have some</p> <p>2 errant disposers.</p> <p>3 Q Okay. So, in fact, you don't know how the</p> <p>4 waste is presently being disposed, do you?</p> <p>5 A In terms of every amount of waste being</p> <p>6 generated, no. In terms of our analysis, we looked at</p> <p>7 year 2007, 2008 for which data were available, and that</p> <p>8 gives us a basis for performing an analysis.</p> <p>9 Q Let me ask you specifically the sources of the</p> <p>10 data that you analyzed. What were the sources?</p> <p>11 A The primary source of information, in terms of</p> <p>12 generation quantities --</p> <p>13 Q Yes.</p> <p>14 A -- was the Texas Commission on Environmental</p> <p>15 Quality records.</p> <p>16 Q Okay. Aside from records provided to you by</p> <p>17 the Texas Commission on Environmental Quality, what</p> <p>18 other sources of information did you analyze in looking</p> <p>19 at waste generation in Montgomery County, Texas?</p> <p>20 A I did look at some regional planning documents.</p> <p>21 I looked at available information that were secondary</p> <p>22 sources in terms of studies that have been performed of</p> <p>23 wastewaters being generated.</p> <p>24 Q Okay.</p> <p>25 MR. WALKER: I'm sorry, Your Honor. Could</p>

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118	<p>1 I ask the court reporter to read back that last answer.</p> <p>2 (The record was read as requested)</p> <p>3 MR. WALKER: Thank you, ma'am.</p> <p>4 Q (BY MR. WALKER) What regional studies did you</p> <p>5 look at, Mr. Bost?</p> <p>6 A Some of the studies I looked at were regional</p> <p>7 studies dealing with specific watersheds, watershed</p> <p>8 planning activities. These were, in part, done by</p> <p>9 agencies such as the San Jacinto River Authority and</p> <p>10 others so that -- you know, they included numbers</p> <p>11 relative to wastewater generation quantities and</p> <p>12 environmental and public interest issues that were being</p> <p>13 evaluated in the context of their watershed planning.</p> <p>14 Q What specifically did you glean from material</p> <p>15 generated by the San Jacinto River Authority?</p> <p>16 A Specifically, the San Jacinto River Authority</p> <p>17 via watershed management planning identified some issues</p> <p>18 associated with projected population growth; the need to</p> <p>19 address future wastewater; the fact that, you know, the</p> <p>20 loadings on some of the receiving streams in the San</p> <p>21 Jacinto River watershed were believed to potentially be</p> <p>22 impacting water quality, sediment quality, and may be</p> <p>23 posing significant environmental issues.</p> <p>24 Q Did the San Jacinto River Authority material,</p> <p>25 in its entirety, contradict any information on waste</p>	120	<p>1 and not the small quantities, but those that were in the</p> <p>2 records narrowed to remove those that were discharging</p> <p>3 to a POTW.</p> <p>4 Q Well, let me ask you this: Is there Class I</p> <p>5 industrial waste being discharged and needing to be</p> <p>6 disposed of in Montgomery County that's not accounted</p> <p>7 for in the TCEQ records?</p> <p>8 A Yes.</p> <p>9 Q What would the source be of that information?</p> <p>10 A You know, that's a good question, because the</p> <p>11 challenge that planning entities have is that there's</p> <p>12 not necessarily good records in terms of total universe</p> <p>13 of wastewaters that would fit the classification Class I</p> <p>14 non-hazardous.</p> <p>15 Q So did you base your calculations on</p> <p>16 information that was unreliable?</p> <p>17 A I wouldn't consider it unreliable. It's</p> <p>18 reliable in the context of what it is.</p> <p>19 Q Would you consider that you based some of your</p> <p>20 calculations on iffy information?</p> <p>21 A I wouldn't call it iffy information. It is the</p> <p>22 records of the State of Texas relative to reported Class</p> <p>23 I non-hazardous wastewaters that are in -- that are in</p> <p>24 their records and as I adjusted those records for the</p> <p>25 particular analysis that I did. What's not in those</p>
119	<p>1 generation that you got from the Texas Commission on</p> <p>2 Environmental Quality?</p> <p>3 A I don't recall there being a contradiction, per</p> <p>4 se.</p> <p>5 Q Did it supplement or add to, as far as quantity</p> <p>6 of waste generated, information you got from TCEQ?</p> <p>7 A I would say it supplemented.</p> <p>8 Q How did it supplement it?</p> <p>9 A Well, it -- you know, the San Jacinto River</p> <p>10 Authority watershed planning studies, you know, looked</p> <p>11 at wastewaters that were being discharged from multiple</p> <p>12 sources, inclusive of municipal sources, smaller</p> <p>13 entities; whereas the records I was looking at were</p> <p>14 those that, for purpose of our evaluation, had been</p> <p>15 narrowed to Class I non-hazardous waste liquid</p> <p>16 generators that were disposing off-site.</p> <p>17 Q Let me cut to the chase, if I can.</p> <p>18 You've come up with in your prefiled</p> <p>19 testimony a total of waste generated, Class I</p> <p>20 non-hazardous industrial waste, in Montgomery County,</p> <p>21 have you not, for 2007-2008?</p> <p>22 A I did. And in doing so, I explained what that</p> <p>23 value represented. Specifically, it represented</p> <p>24 evaluation of the state records which were limited to</p> <p>25 off-site discharges or disposal, not on-site disposal;</p>	121	<p>1 records and what are not reported are such things as</p> <p>2 every service station, automotive repair facility,</p> <p>3 numerous commercial entities that generate small</p> <p>4 quantities of liquid waste that are not captured by our</p> <p>5 current regulatory program.</p> <p>6 Q Why are you including those sources?</p> <p>7 A As I believe I indicated in some of my</p> <p>8 discussion, you know, surface water discharges, nonpoint</p> <p>9 runoff, these are major issues in terms of loadings to</p> <p>10 the area watersheds and in turn to the groundwater in</p> <p>11 the county.</p> <p>12 Q Let me get back to the point of the calculation</p> <p>13 of wastewater, Class I non-hazardous industrial</p> <p>14 wastewater, generated in Montgomery County, Texas.</p> <p>15 Is it your testimony today that that sum,</p> <p>16 that total, is beyond and more than the records provided</p> <p>17 by TCEQ?</p> <p>18 A Yes, as a general statement.</p> <p>19 Q And tell us where we can find today the sources</p> <p>20 of that information that would reflect that additional</p> <p>21 waste generation beyond what TCEQ reports.</p> <p>22 A In terms of quantitative?</p> <p>23 Q Yes.</p> <p>24 A There are not -- you know, there are not</p> <p>25 records being generated. There are not reporting being</p>

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<p style="text-align: right;">122</p> <p>1 done to capture all that. You know, people have done 2 various studies and made different estimates, and many 3 of those are regional estimates; some of them are 4 national estimates. So in terms of doing a study to 5 simulate that -- generate my own estimate of -- for 6 Montgomery County, I did not do that. But there are 7 numerous commercial entities within the county that 8 generate small quantities that are not captured by those 9 records.</p> <p>10 Q Okay. So are you saying that your calculations 11 for the amount of waste generated in Montgomery 12 County -- and when I say "waste," we're talking about 13 Class I non-hazardous industrial waste. Would you agree 14 with that? That's what I'm talking about. Do you agree 15 to that --</p> <p>16 A Yes. I --</p> <p>17 Q -- assessment?</p> <p>18 A Uh-huh.</p> <p>19 Q Okay. So are you saying that your calculation 20 of total waste Montgomery County is generating is 21 somewhat based on estimates that you have, what, 22 extrapolated from a variety of sources?</p> <p>23 A No. I think I'm very clear as to what the 24 numbers are in my prefiled testimony. Those numbers 25 that I used for illustrating some of the points in</p>	<p style="text-align: right;">124</p> <p>1 Q Of course, I asked my question in terms of 2 pounds, so I would prefer that you respond in terms of 3 pounds, if you can.</p> <p>4 A In 2007, approximately 4.7 billion pounds of 5 Class I non-hazardous waste based upon the corrected 6 TCEQ records and, again, excluding the surface water 7 discharges through Publicly Owned Treatment Works.</p> <p>8 Q Now, let me -- okay. Thank you, sir.</p> <p>9 Let me ask you this: 4.7 billion pounds, 10 is that quantity supported strictly by TCEQ records?</p> <p>11 A It is not inconsistent with other records, but 12 it is based upon a calculation using TCEQ records.</p> <p>13 MR. WALKER: That response is 14 nonresponsive.</p> <p>15 Q (BY MR. WALKER) Is it supported by TCEQ 16 records? 4.7 billion pounds?</p> <p>17 A I'm not sure I understand your question.</p> <p>18 Q Let me rephrase it.</p> <p>19 4.7 billion pounds, can you find TCEQ 20 records that say in 2007-2008 that 4.7 billion pounds of 21 non-hazardous Class I industrial waste were generated in 22 Montgomery County, Texas?</p> <p>23 A If your question is can I find in a TCEQ 24 document the number 4.7 billion pounds, I don't know. 25 Is it based upon taking TCEQ records and then summing up</p>
<p style="text-align: right;">123</p> <p>1 the -- embedded in my opinions are clearly taken from 2 state records. I was very clear in terms of discussing 3 how I modified those records to eliminate the volumes 4 that were currently going to a Public Owned Treatment 5 Works and stated what the resulting values are. Are 6 those exact values? No. Are they values that can be 7 discussed for comparison purposes with the proposed 8 capacity and proposed permit limits in terms of waste 9 being received by TexCom facility? Yes. Do they 10 provide a basis for making a relative comparison of the 11 capacity of TexCom facility with the waste being 12 generated and reported to the state currently? Yes.</p> <p>13 And we discussed earlier that that 14 represents about a third of that reported volume after 15 subtracting out the potable Public Owned Treatment Work 16 volumes.</p> <p>17 Q So what's the total, in pounds, Class I 18 non-hazardous industrial waste generated in Montgomery 19 County, Texas, for 2007-2008?</p> <p>20 A What I reported and explained in my 21 calculations were taking the poundage and converting it 22 to a volume, and I reported 570 million gallons in 2007 23 and 635 million gallons in 2008 based upon the state 24 records and how I adjusted them to remove that being 25 discharged to POTWs.</p>	<p style="text-align: right;">125</p> <p>1 after I made the adjustments and exclusions? The answer 2 is, yes, it's supported by TCEQ records.</p> <p>3 Q We'll move on to something else just for the 4 moment, Mr. Bost.</p> <p>5 If you know, Mr. Bost, what considerations 6 are involved when a generator decides where to send its 7 waste stream?</p> <p>8 A Well, several considerations.</p> <p>9 Q What would they be?</p> <p>10 A The nature of the waste, classification of the 11 waste, regulatory, framework that affects decisions on 12 disposal, economics of on-site use versus off-site 13 disposal versus recycling versus other considerations 14 that relate to the -- their business.</p> <p>15 Q Very good.</p> <p>16 Would you agree with me, then, that only 17 one of the considerations that a generator would review 18 would be the economic issue?</p> <p>19 A As a -- yes.</p> <p>20 Q Okay. If you look at Page 13 of your prefiled 21 testimony, Mr. Bost, you were asked a question about the 22 disposal practices for handling large quantities of 23 liquid industrial waste.</p> <p>24 Let me ask you: What are the disposal 25 options for large quantities of liquid industrial waste</p>

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126	<p>1 in Montgomery County?</p> <p>2 A Public Owned Treatment Works is an option, for</p> <p>3 practical purposes. There is not another option of</p> <p>4 those that I listed, which include disposal to a coastal</p> <p>5 waste disposal facility, solidification subsequent</p> <p>6 landfilling, incineration, or underground injection</p> <p>7 control within Montgomery County --</p> <p>8 Q Very good.</p> <p>9 A -- for very large quantities.</p> <p>10 Q All right. Thank you, sir.</p> <p>11 Would you agree with me that as of today,</p> <p>12 the large quantities of industrial waste being generated</p> <p>13 in Montgomery County are being disposed of without using</p> <p>14 underground injection?</p> <p>15 A The large quantity of Class I non-hazardous</p> <p>16 quantity that is being disposed of is being disposed of</p> <p>17 to Public Owned Treatment Works.</p> <p>18 Q All right. And I --</p> <p>19 A In Montgomery County.</p> <p>20 Q Thank you, sir. And I want to ask that</p> <p>21 question again because I think I left something out.</p> <p>22 The large quantities that are being</p> <p>23 generated in Montgomery County today are being disposed</p> <p>24 of without using underground injection in Montgomery</p> <p>25 County. Is that correct?</p>	128	<p>1 we're talking about and as modified is not being</p> <p>2 injected in Montgomery County. It's being injected in</p> <p>3 other counties.</p> <p>4 Q Very good.</p> <p>5 Mr. Bost, how many individuals or</p> <p>6 corporate entities have approached you from Montgomery</p> <p>7 County saying, "We need injection services in Montgomery</p> <p>8 County"?</p> <p>9 A Well, as we know, TexCom approached me. About</p> <p>10 five or six years ago, someone else approached me</p> <p>11 looking at a potential project in the area, but it</p> <p>12 wasn't limited to Montgomery County.</p> <p>13 Q So if I understand your answer correctly, the</p> <p>14 only entity that has approached you lately is TexCom?</p> <p>15 A Most recently, yes.</p> <p>16 Q You have mentioned the term "Publicly Owned</p> <p>17 Treatment Works." Is that -- well, without insulting</p> <p>18 any technical folks present, is that essentially the</p> <p>19 same thing as a sewer treatment plant?</p> <p>20 A In lay terms, it's often referred to that way.</p> <p>21 Q Very good. That's what I am, is a layperson.</p> <p>22 I apologize for the comment.</p> <p>23 Is the sewer treatment plants or the</p> <p>24 Publicly Owned Treatment Works a method of disposal</p> <p>25 that, in your opinion, you would consider to be well</p>
127	<p>1 A There is no underground injection in Montgomery</p> <p>2 County for the Class I non-hazardous that we're</p> <p>3 discussing. That's not to say there's no underground</p> <p>4 injection of liquid waste within Montgomery County.</p> <p>5 Q Thank you, sir. And I've tried to limit our</p> <p>6 discussion to Class I non-hazardous waste. I'm not</p> <p>7 talking about Class II injection.</p> <p>8 But Class I underground injection, there's</p> <p>9 none occurring in Montgomery County today. Is that</p> <p>10 correct?</p> <p>11 A Yes, that's why -- I assumed that was what you</p> <p>12 were referring to and why I modified, in part, your</p> <p>13 question in answering because I assumed you were</p> <p>14 referring to the Class I non-hazardous.</p> <p>15 Q Thank you, sir.</p> <p>16 Historically, would it also be true to say</p> <p>17 that the large quantities of Class I industrial waste</p> <p>18 disposed of by generators in Montgomery County</p> <p>19 historically have done so without using injection</p> <p>20 facilities in Montgomery County? Historically. Is that</p> <p>21 correct?</p> <p>22 A In terms of my review of the records, which</p> <p>23 only goes back a few years, the Class I non-hazardous</p> <p>24 waste injection, you know, most of the waste -- Class I</p> <p>25 non-hazardous wastewater that's being generated that</p>	129	<p>1 known in the state of Texas?</p> <p>2 A That's a broad classification -- statement.</p> <p>3 But as a general response, I would say yes.</p> <p>4 Q In your opinion, Mr. Bost, would there be a</p> <p>5 number of municipalities around the state of Texas that</p> <p>6 dispose of Class I non-hazardous industrial waste by</p> <p>7 using Publicly Owned Treatment Works?</p> <p>8 A Yes.</p> <p>9 Q From my edification --</p> <p>10 A I would qualify that to say I wouldn't</p> <p>11 necessarily state it in that way, but they do because</p> <p>12 the disposal would be from the generators and then the</p> <p>13 receiving facility -- the sewer plant would be treating</p> <p>14 it and then discharging it.</p> <p>15 Q Very good. Thank you.</p> <p>16 For my edification, Mr. Bost, what is the</p> <p>17 difference between a Publicly Owned Treatment Works and</p> <p>18 a coastal waste disposal facility?</p> <p>19 A A coastal waste disposal facility is, in the</p> <p>20 state of Texas, a semi-governmental entity that is in</p> <p>21 the coastal area that's disposing of wastewater from</p> <p>22 industrial sources, primarily.</p> <p>23 Q Let me ask you this: Does a -- well, first of</p> <p>24 all, can we agree that a coastal waste disposal facility</p> <p>25 may be referred to by abbreviation CWDF?</p>

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<p style="text-align: right;">130</p> <p>1 A Yes.</p> <p>2 Q Does such a facility accept a waste stream,</p> <p>3 treat it, and then dispose of it in some fashion?</p> <p>4 A Yes.</p> <p>5 Q What is the typical method of disposal or</p> <p>6 atypical method after treatment?</p> <p>7 A A wastewater is discharged. To the extent</p> <p>8 solids are generated, they're either landfilled or</p> <p>9 landfarmed --</p> <p>10 Q Okay.</p> <p>11 A -- or disposed of off-site.</p> <p>12 Q All right. If the waste stream is treated and</p> <p>13 then disposed of in a liquid form, where is it sent, if</p> <p>14 you will, if we're talking about a CWDF?</p> <p>15 A I didn't understand the question.</p> <p>16 Q All right.</p> <p>17 A State it --</p> <p>18 Q Let me back up.</p> <p>19 A -- again. I'm sorry.</p> <p>20 Q All right. That's fine.</p> <p>21 The Publicly Owned Treatment Works for</p> <p>22 Montgomery County, after treatment of their waste</p> <p>23 stream, discharges into the San Jacinto River. Is that</p> <p>24 correct?</p> <p>25 A As a simple statement, yes.</p>	<p style="text-align: right;">132</p> <p>1 A Yes.</p> <p>2 Q Are there any other generators of any</p> <p>3 significance in that seven-mile radius that you're</p> <p>4 referring to, other than Huntsman and Chevron Phillips?</p> <p>5 A Not that I recall.</p> <p>6 Q So is it your testimony, then, for calendar</p> <p>7 years 2007 and 2008, all the other generators of Class I</p> <p>8 non-hazardous industrial waste in Montgomery County,</p> <p>9 other than Chevron Phillips and Huntsman, constituted</p> <p>10 one-tenth of 1 percent?</p> <p>11 A For the purpose of that calculation that was</p> <p>12 done -- it varies from year to year. But for the</p> <p>13 purpose of that calculation, that was 99 percent.</p> <p>14 Q Let me ask you this: Based on your research,</p> <p>15 based on all the information you looked at, 2007, 2008</p> <p>16 coming forward, 2009, what other significant Class I</p> <p>17 generator exists in Montgomery County, other than</p> <p>18 Chevron Phillips and Huntsman? Keep in mind, I used the</p> <p>19 word "significant."</p> <p>20 A Well, you know, the word "significant" is in</p> <p>21 the eye of the beholder. You know, the fact that we</p> <p>22 have several other generators within Montgomery County</p> <p>23 and they also require a report, that would be viewed as</p> <p>24 significant. In terms of the very largest generators,</p> <p>25 clearly those two are the largest. Is there potential</p>
<p style="text-align: right;">131</p> <p>1 Q All right. Thank you.</p> <p>2 In that fashion or similarly, where would</p> <p>3 the liquid waste stream after treatment be discharged</p> <p>4 into at a coastal waste disposal facility?</p> <p>5 A In a coastal water body.</p> <p>6 Q Such as?</p> <p>7 A Galveston Bay.</p> <p>8 Q Very good.</p> <p>9 Mr. Bost, I believe you've indicated in</p> <p>10 your prefiled testimony that some 99.9 percent of the</p> <p>11 industrial waste, Class I non-hazardous, generated in</p> <p>12 2007 and 2008 was generated within seven miles of the</p> <p>13 proposed TexCom facility. Is that correct?</p> <p>14 A Yes.</p> <p>15 Q Please listen carefully to this question.</p> <p>16 What are the generators, if more than one,</p> <p>17 that you are referring to that constitute the</p> <p>18 99.9 percent of the generation for 2007 and 2008 that</p> <p>19 are within seven miles of the proposed facility?</p> <p>20 A Using very brief references to them, we often</p> <p>21 refer to them as Huntsman and Chevron.</p> <p>22 Q All right. For our purposes today -- and don't</p> <p>23 let me lead you astray -- are you saying that generally,</p> <p>24 the 99.9 percent of the waste generated for 2007 and</p> <p>25 2008 were generated by Chevron Phillips and Huntsman?</p>	<p style="text-align: right;">133</p> <p>1 for other industrial facilities to locate within</p> <p>2 Montgomery County in the future? Yes. Is the potential</p> <p>3 there for --</p> <p>4 MR. WALKER: Your Honor, I'm going to</p> <p>5 object to the rambling nonresponsive bit of his</p> <p>6 testimony. At this point, I think he's answered my</p> <p>7 question.</p> <p>8 JUDGE EGAN: Just listen to his question,</p> <p>9 please, and just answer it. Don't elaborate. If</p> <p>10 Mr. Riley feels like he needs to clarify something, he</p> <p>11 will.</p> <p>12 MR. WALKER: Judge, I do want this witness</p> <p>13 to testify. I'm not trying to put him in a box, but I</p> <p>14 want him to listen to my question.</p> <p>15 MR. RILEY: We all want that, Counselor.</p> <p>16 I don't know the statement is necessary.</p> <p>17 JUDGE EGAN: That's fine.</p> <p>18 Just listen to the question and answer the</p> <p>19 question, please.</p> <p>20 Q (BY MR. WALKER) Mr. Bost, you've used the</p> <p>21 figure 99.9 percent in your prefiled testimony. Is that</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q All right. I use the word "significant."</p> <p>25 Maybe it wasn't a great word.</p>

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134	<p>1 But coming forward, 2007, 2008, 2009,</p> <p>2 based on your information, your review, your study,</p> <p>3 we're talking, at least so far, based on your testimony,</p> <p>4 one-tenth of 1 percent available. So is there some</p> <p>5 other large quantity generator in this one-tenth of</p> <p>6 1 percent, or coming forward, 2009, has the figure</p> <p>7 changed, if you know?</p> <p>8 A Clearly, in the context of 2007, 2008, those</p> <p>9 two generators were the largest generators representing</p> <p>10 very large percentage of the total waste generated. As</p> <p>11 far as I know, that has not changed for 2009.</p> <p>12 Q Thank you, sir.</p> <p>13 For those two major generators, Chevron</p> <p>14 Phillips and Huntsman, are they currently disposing of</p> <p>15 their waste streams outside of Montgomery County, if you</p> <p>16 know?</p> <p>17 A In terms of the specific waste that we're</p> <p>18 discussing, they're disposing those outside the county.</p> <p>19 Q Thank you, sir.</p> <p>20 Are those two waste generators and/or the</p> <p>21 people that run those companies happy with that</p> <p>22 arrangement right now, if you know?</p> <p>23 MR. RILEY: Objection. Happy? I'm sorry.</p> <p>24 I don't mean to be flippant, but --</p> <p>25 JUDGE EGAN: You want to state the</p>	136	<p>1 A Yes.</p> <p>2 Q I'm not talking about the calculation. But how</p> <p>3 do you know, if you know, that sales tax can be</p> <p>4 collected for the reception and disposal of Class I</p> <p>5 industrial waste?</p> <p>6 A Based upon my evaluation at the time, that was</p> <p>7 my belief, yes.</p> <p>8 Q Your belief was based upon what?</p> <p>9 A We contacted the county; we looked at</p> <p>10 regulatory programs; we looked at the anticipated</p> <p>11 activities; we discussed the matter with the TexCom and</p> <p>12 with counsel; and we concluded that it was appropriate</p> <p>13 to do a sales tax calculation.</p> <p>14 Q I'm not asking you to quote some person that's</p> <p>15 not here, but who did you talk to -- not what they said,</p> <p>16 but who did you talk to representing Montgomery County?</p> <p>17 A I don't recall.</p> <p>18 Q Well, now, you're testifying that you talked</p> <p>19 with someone of an official capacity at Montgomery</p> <p>20 County?</p> <p>21 A Staff reporting to me contacted Montgomery</p> <p>22 County and obtained information from them and discussed</p> <p>23 sales tax.</p> <p>24 Q So staff that reported to you spoke with</p> <p>25 someone at Montgomery County discussing the issue of</p>
135	<p>1 objection?</p> <p>2 MR. RILEY: Yes. The objection is that, I</p> <p>3 guess, he's asking the witness if they know the</p> <p>4 emotional state of the companies and the individuals in</p> <p>5 the companies.</p> <p>6 JUDGE EGAN: Would you like to rephrase</p> <p>7 your question?</p> <p>8 MR. WALKER: Thank you, Your Honor. I'll</p> <p>9 be glad to.</p> <p>10 Q (BY MR. WALKER) Mr. Bost, if you know, are the</p> <p>11 controlling entities at Chevron Phillips and Huntsman</p> <p>12 pleased with or do they find their current disposal</p> <p>13 methods appropriate for their operations, economically</p> <p>14 feasible, good, industrially appropriate? You pick.</p> <p>15 I'm trying to know if you know whether or not those two</p> <p>16 companies have a, in their view, appropriate,</p> <p>17 successful, economically feasible method of disposal</p> <p>18 today.</p> <p>19 A I do not know those -- the views of those two</p> <p>20 companies as to their current disposal practices.</p> <p>21 Q Thank you, sir.</p> <p>22 You've testified -- I believe it was on</p> <p>23 Page 22 of your prefiled testimony -- Mr. Bost, about a</p> <p>24 sales tax calculation. Can you find that information in</p> <p>25 your prefiled?</p>	137	<p>1 sales tax?</p> <p>2 A Yes.</p> <p>3 Q Now, did -- you yourself did not talk to</p> <p>4 J.R. Moore, Jr., the tax assessor collector, did you?</p> <p>5 A No, I did not.</p> <p>6 Q So are you comfortable in asserting today that</p> <p>7 the disposal of Class I industrial waste as proposed by</p> <p>8 TexCom will result in a charge by them to shippers of a</p> <p>9 sales tax that will be reported to the State of Texas?</p> <p>10 A That's my understanding.</p> <p>11 Q Very good. Thank you, sir.</p> <p>12 Now, then, all of your testimony,</p> <p>13 Mr. Bost, about air quality, truck traffic, pollution,</p> <p>14 is it fair to say that all of that testimony is based</p> <p>15 upon your determination or assumption that Chevron</p> <p>16 Phillips and/or Huntsman or both will become clients of</p> <p>17 TexCom?</p> <p>18 A Yes.</p> <p>19 Q So let me ask you: Is that possibility in any</p> <p>20 way a guarantee, as far as you know?</p> <p>21 A There's no guarantee. There's no written</p> <p>22 contract at this point. It is a reasonable conclusion</p> <p>23 based upon the economics that -- given that these two</p> <p>24 facilities are currently injecting, their waste in terms</p> <p>25 of their economics don't make them amenable for</p>

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138	<p>1 discharge and treatment by the City of Conroe sewer</p> <p>2 plant, that they would look at the economics of</p> <p>3 eliminating that long transportation cost and would look</p> <p>4 at disposing at a facility approximate to them.</p> <p>5 Q Okay. And I don't recall the specifics of your</p> <p>6 response, but maybe 15 minutes ago, I believe you stated</p> <p>7 that there were a variety of considerations, perhaps a</p> <p>8 laundry list of considerations, when a generator was</p> <p>9 going to decide where to send their waste stream beyond</p> <p>10 just the economic consideration. Isn't that correct?</p> <p>11 A Yes.</p> <p>12 Q So let me ask you, Mr. Bost, "if Chevron</p> <p>13 Phillips and Huntsman do not become clients of TexCom,</p> <p>14 aren't all of your calculations gone?</p> <p>15 A In terms of the particular questions associated</p> <p>16 with disposal of that waste in -- at the TexCom</p> <p>17 facility, that's correct. If we're looking at --</p> <p>18 Q Thank you, sir. I believe that's responsive to</p> <p>19 my question.</p> <p>20 Are you aware, Mr. Bost, of the roadways</p> <p>21 that are adjacent to the proposed TexCom facility by</p> <p>22 name?</p> <p>23 A I don't recall their names offhand at the</p> <p>24 moment.</p> <p>25 Q Are you familiar with the roadway that is named</p>	140	<p>1 if -- in your efforts on behalf of TexCom, are you aware</p> <p>2 of any attempt by TexCom to secure an entrance to their</p> <p>3 facility along FM 3083?</p> <p>4 A I am not cognizant of the current situation</p> <p>5 relative to entrance or exit. I was not asked to</p> <p>6 address that question.</p> <p>7 Q All right. Thank you, sir.</p> <p>8 Now, then, Mr. Bost, let me return just</p> <p>9 for a moment, if TexCom was granted a permit and if</p> <p>10 Chevron Phillips and Huntsman do not become clients,</p> <p>11 based on your study and based on your calculation of the</p> <p>12 percentage of waste generated by those two entities,</p> <p>13 where would other clients come from?</p> <p>14 A As I indicated earlier, you have existing</p> <p>15 generators besides those two within the county. In</p> <p>16 addition to those which have reported wastewaters or</p> <p>17 other generators of wastewaters that could be captured</p> <p>18 through, people are doing hauling of waters, that would</p> <p>19 be acceptable for acceptance. There's also generation</p> <p>20 of Class I non-hazardous waste in adjacent counties.</p> <p>21 Q Okay.</p> <p>22 A They would not be precluded from taking waste</p> <p>23 from elsewhere in Texas.</p> <p>24 Q Thank you, sir.</p> <p>25 If those two large generators that we've</p>
139	<p>1 Creighton Road? Have you heard that name?</p> <p>2 A Yes.</p> <p>3 Q Are you familiar with a roadway that goes by</p> <p>4 the name of Farm to Market Road 3083? Have you heard</p> <p>5 that one?</p> <p>6 A Yes.</p> <p>7 Q Do you know if TexCom has frontage on each of</p> <p>8 those roadways?</p> <p>9 A My understanding is they have access to both</p> <p>10 roadways potentially.</p> <p>11 Q All right. Are you aware, Mr. Bost, that the</p> <p>12 frontage or the entrance on Creighton Road has been, at</p> <p>13 least, preliminarily determined to be unsuitable?</p> <p>14 A I have not addressed the question of entrance</p> <p>15 and exit for the facility.</p> <p>16 Q Okay. So you're not aware of that point or</p> <p>17 that issue?</p> <p>18 MR. RILEY: Objection. Counsel's</p> <p>19 testifying as to a fact as if that's true; and I'm not</p> <p>20 sure what he's drawing on, but there's certainly no</p> <p>21 evidence of that.</p> <p>22 JUDGE EGAN: I think this witness cleared</p> <p>23 up that he has not investigated the entrance and exit</p> <p>24 issues in this case. Objection is overruled.</p> <p>25 Q (BY MR. WALKER) Let me ask you, Mr. Bost,</p>	141	<p>1 been referring to, Chevron Phillips and Huntsman, do not</p> <p>2 become clients, would you agree that it would be in</p> <p>3 TexCom's interest to find replacement waste, excluding</p> <p>4 those two, to bring to their facility economically?</p> <p>5 Wouldn't that be a plan?</p> <p>6 A Yes.</p> <p>7 Q And if those generators to replace these two</p> <p>8 large ones that, at least perspectively, might not be</p> <p>9 clients, wouldn't those generators be driving trucks on</p> <p>10 Montgomery County roads from outside to in the county --</p> <p>11 into the county?</p> <p>12 A Yes.</p> <p>13 Q And if that happens, aren't your calculations</p> <p>14 and your references and your suggestions about economic</p> <p>15 impact, pollution, beating up the roads, messing up the</p> <p>16 ozone, aren't those calculations gone?</p> <p>17 A No. They're still accurate for the scenario</p> <p>18 that I was asked to address, and you're assuming an</p> <p>19 alternative hypothetical. And as I indicated earlier,</p> <p>20 there's still public interest aspects in terms of the</p> <p>21 need for waste disposal facilities within Montgomery</p> <p>22 County for future growth and within the region.</p> <p>23 Q Okay. Well, thank you, sir. Let me rephrase</p> <p>24 my question because I am asking you to assume a</p> <p>25 hypothetical other than your hypothetical.</p>

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<p style="text-align: right;">142</p> <p>1 And that one I'm asking you to assume is</p> <p>2 that the 99.9 percent is not going to come from 7 miles</p> <p>3 down the road. And if TexCom is going to make a profit</p> <p>4 and dispose of waste in some similar amount, isn't it</p> <p>5 going to have to come from outside Montgomery County?</p> <p>6 I'm not saying that some won't come from inside, but</p> <p>7 we're talking about replacing the 99.9 percent here.</p> <p>8 A It's a reasonable scenario, that waste would be</p> <p>9 coming in from outside of Montgomery County. And as I</p> <p>10 indicated in response to an earlier question from</p> <p>11 another counsel, one could look at that scenario as what</p> <p>12 are the public interest aspects associated with traffic,</p> <p>13 air emissions for that scenario.</p> <p>14 And so if the waste is not coming</p> <p>15 principally from Montgomery County and you're assuming</p> <p>16 it's coming from outside of Montgomery County, then the</p> <p>17 logical sources of that waste are nearby counties,</p> <p>18 because from an economic perspective, a major component</p> <p>19 and often the primary component of waste disposal costs</p> <p>20 for off-site disposal is the hauling costs.</p> <p>21 Q Thank you, sir. Let me ask you --</p> <p>22 A And to --</p> <p>23 Q -- one final question.</p> <p>24 MR. RILEY: Objection. He was not</p> <p>25 finished with his answer, and it was responsive.</p>	<p style="text-align: right;">144</p> <p>1 A I don't think TexCom would be here today if</p> <p>2 they did not have a realistic expectation that this was</p> <p>3 a viable business opportunity and that they would be</p> <p>4 successful.</p> <p>5 Q A viable business opportunity, would you agree,</p> <p>6 regardless of where the waste comes from?</p> <p>7 A I think that any business person would look at,</p> <p>8 you know, not just the preferred scenario but also</p> <p>9 alternatives, but I don't believe they would be here</p> <p>10 today if they didn't have confidence in the outcome of</p> <p>11 their venture.</p> <p>12 Q Thank you, sir.</p> <p>13 MR. WALKER: I'll pass the witness, Your</p> <p>14 Honor.</p> <p>15 JUDGE EGAN: Mr. Humphrey?</p> <p>16 MR. HUMPHREY: Yes, Your Honor.</p> <p>17 JUDGE EGAN: Do you have some questions?</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. HUMPHREY:</p> <p>20 Q I'm going to follow up a little bit on your</p> <p>21 testimony regarding the traffic.</p> <p>22 I think that you testified in</p> <p>23 cross-examination that you did not take into</p> <p>24 consideration the influx of traffic into the county as a</p> <p>25 result of the proposed facility. Is that correct?</p>
<p style="text-align: right;">143</p> <p>1 JUDGE EGAN: I agree. I don't think he's</p> <p>2 quite finished.</p> <p>3 MR. WALKER: I'm sorry, Judge.</p> <p>4 JUDGE EGAN: Go ahead.</p> <p>5 A And a proposed facility is well documented.</p> <p>6 The plan is well presented. The types of waste that</p> <p>7 this facility can take and handle and do so safely</p> <p>8 consistent with EPA's evaluation that UIC injection</p> <p>9 disposal is a safer method than alternatives still</p> <p>10 applies in terms of what considerations people would be</p> <p>11 making, in terms of adjusting where they're planning; or</p> <p>12 as future growth takes place, where new generators</p> <p>13 should be sending their waste. And because the</p> <p>14 proximity of the facility, most of that waste would be</p> <p>15 coming from nearby as opposed to traveling larger</p> <p>16 distances to some other facility, say Jefferson or</p> <p>17 Nueces County or some other places in the state that are</p> <p>18 the other alternatives.</p> <p>19 Q (BY MR. WALKER) Thank you, sir. I think, one</p> <p>20 final question.</p> <p>21 Regardless of whether Chevron Phillips and</p> <p>22 Huntsman become clients or whether TexCom will have to</p> <p>23 seek clients from outside Montgomery County, if you</p> <p>24 know, will TexCom still be attempting and hoping to make</p> <p>25 a profit?</p>	<p style="text-align: right;">145</p> <p>1 A It is accurate that in terms of the scenarios</p> <p>2 that I examined --</p> <p>3 Q Yes, in your prefiled.</p> <p>4 A -- that was for -- that was for disposal coming</p> <p>5 from Montgomery County.</p> <p>6 Q Okay. If you had taken into consideration the</p> <p>7 potential traffic that might be coming into the county</p> <p>8 as a result of the facility, is it possible that you</p> <p>9 might have changed your conclusion about the overall</p> <p>10 impact on traffic?</p> <p>11 A It would be a different scenario, so</p> <p>12 inherently, the conclusion would be somewhat different.</p> <p>13 So if one's looking at a regional basis, then having a</p> <p>14 new disposal facility at Montgomery County from a</p> <p>15 traffic perspective where the other options for disposal</p> <p>16 are farther away, again, create the opportunity for</p> <p>17 disposal at a facility that would result in less travel.</p> <p>18 Q If you had taken into consideration the influx</p> <p>19 of traffic into the county, is it possible you would</p> <p>20 have reached a different conclusion regarding the impact</p> <p>21 of traffic?</p> <p>22 A I already said yes.</p> <p>23 Q Okay. And if you had reached a different</p> <p>24 conclusion, could that conclusion have been that this</p> <p>25 facility will result in greater traffic in Montgomery</p>

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146	<p>1 County?</p> <p>2 A A conclusion for a scenario where the waste was</p> <p>3 coming from outside the county and it's new waste coming</p> <p>4 in would be there would be increased traffic into the</p> <p>5 county.</p> <p>6 Q And if you had reached that conclusion, that</p> <p>7 there were increased traffic in Montgomery County, might</p> <p>8 you also have concluded that you could have more</p> <p>9 accidents and more risk of death in Montgomery County as</p> <p>10 a result of this facility?</p> <p>11 A In terms of particular probability associated</p> <p>12 with that increase, yes.</p> <p>13 Q Thank you.</p> <p>14 MR. HUMPHREY: I'll pass the witness.</p> <p>15 JUDGE EGAN: Okay. Ms. Goss?</p> <p>16 MS. GOSS: The executive director doesn't</p> <p>17 have any questions for Mr. Bost this afternoon. Thank</p> <p>18 you.</p> <p>19 JUDGE EGAN: Any redirect?</p> <p>20 MR. RILEY: Just a few.</p> <p>21 JUDGE EGAN: Okay.</p> <p>22 REDIREC EXAMINATION</p> <p>23 BY MR. RILEY:</p> <p>24 Q Mr. Bost, let's pick up where Mr. Humphreys</p> <p>25 left off.</p>	148	<p>1 and looked at the differences.</p> <p>2 Q And we were talking -- or I think Mr. Walker</p> <p>3 and others have asked you a question about markets, and</p> <p>4 particularly in the context of this case, waste disposal</p> <p>5 markets.</p> <p>6 With that as a premise, can you tell me</p> <p>7 what element of waste disposal is likely to be the</p> <p>8 highest cost? What component of disposal cost?</p> <p>9 A Often, the transportation cost is the greatest</p> <p>10 cost, but it depends on the situation. If you have a</p> <p>11 facility that is close by for disposal, then</p> <p>12 transportation costs may not be the primary cost.</p> <p>13 Q Is it -- compare for me, then, the question</p> <p>14 Mr. Humphreys was asking you and the questions</p> <p>15 Mr. Walker was asking you, as it pertains to your</p> <p>16 analysis, is there -- is it more complicated than</p> <p>17 facilities that generate Class I wastewater will dispose</p> <p>18 of their wastewater in a closer or more approximate</p> <p>19 location? Is that the analysis, basically?</p> <p>20 A Well, the net outcome of the analysis is that</p> <p>21 proximity is very important on the face evaluation</p> <p>22 point. But what happens is that, you know, there are</p> <p>23 adjustments in terms of competing disposal rates, but</p> <p>24 there comes a point where facilities farther away aren't</p> <p>25 going to subsidize disposal. You know, they're going to</p>
147	<p>1 Is there really something more to the</p> <p>2 analysis of increased risk than vehicle miles traveled?</p> <p>3 A You know, in terms of the analysis I did,</p> <p>4 that's what I calculated on. It was based upon the</p> <p>5 miles traveled.</p> <p>6 Q And that's simple function of if trucks are on</p> <p>7 the road or any other vehicle, for that matter, for some</p> <p>8 period of time, there is risk potential for an accident</p> <p>9 or to have some traffic fatality or something on that</p> <p>10 order. Is that correct?</p> <p>11 A Yes.</p> <p>12 Q So it really is a function of the distance a</p> <p>13 truck or car or any other vehicle, for that matter,</p> <p>14 might travel on a public highway?</p> <p>15 MR. FORSBERG: Objection, form.</p> <p>16 JUDGE EGAN: Try not to lead him.</p> <p>17 MR. RILEY: I'll try. Thank you.</p> <p>18 JUDGE EGAN: You want to rephrase your</p> <p>19 question?</p> <p>20 MR. RILEY: Certainly.</p> <p>21 Q (BY MR. RILEY) Tell me what elements in your</p> <p>22 analysis go into the analysis of risk, as in the context</p> <p>23 of our discussion.</p> <p>24 A In terms of the calculations I did, I looked at</p> <p>25 the miles traveled, the average accident and risk rates,</p>	149	<p>1 insist on a certain margin when they have an opportunity</p> <p>2 for accepting waste from other facilities that are</p> <p>3 closer. They're not going to cut their margins to the</p> <p>4 bone where it doesn't make any sense economically.</p> <p>5 So the outcome -- this thing is cutting in</p> <p>6 and out.</p> <p>7 The outcome of the marketplace is that</p> <p>8 while there's some elasticity -- using the economic</p> <p>9 term -- in terms of price adjustment for competition, in</p> <p>10 reality, there are certain finite constraints that limit</p> <p>11 the degree of competition that exists.</p> <p>12 Q Let's talk about those finite constraints, and</p> <p>13 let's talk about a disposal facility, hypothetical</p> <p>14 disposal facility.</p> <p>15 What are the economic constraints, as you</p> <p>16 see them, for that hypothetical disposal facility as it</p> <p>17 pertains to pricing of their service?</p> <p>18 A There's a fundamental cost of operation.</p> <p>19 There's also an added cost that varies depending upon</p> <p>20 the nature of the waste and how it has to be handled</p> <p>21 upon receipt. So there's a variable cost that is built</p> <p>22 into the waste itself independent of the base cost of a</p> <p>23 disposal facility, and then there's the transportation</p> <p>24 cost that ultimately gets to that facility.</p> <p>25 Q So --</p>

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150	<p>1 A In many cases, a -- quotes are obtained by</p> <p>2 transporters who, you know, solicit quotes from disposal</p> <p>3 facilities. In other cases, the -- you know, in which</p> <p>4 case a disposal facility is giving a quote to a hauler</p> <p>5 for a particular opportunity. In other cases, the</p> <p>6 disposal facility is including transportation in its</p> <p>7 estimate.</p> <p>8 Q So let's start with the first part of your</p> <p>9 answer.</p> <p>10 There is a cost of operation. Can we call</p> <p>11 that the cost to the waste disposal facility for</p> <p>12 purposes of our conversation?</p> <p>13 A Yes. So there's a carrying cost and an</p> <p>14 operating cost that are built into the basic base cost</p> <p>15 of operation.</p> <p>16 Q And someone, I believe it was Mr. Walker, asked</p> <p>17 you about profit. Can we assume that profit is</p> <p>18 something -- some revenue that comes to a company above</p> <p>19 their base costs?</p> <p>20 A Yes.</p> <p>21 Q All things being equal, then, between two</p> <p>22 facilities -- the cost of operation, let's say that's</p> <p>23 equal between two competing facilities, and let's call</p> <p>24 it -- I'm sorry -- let's call those base costs. I</p> <p>25 believe those are the same. What is the defining</p>	152	<p>1 that you're discussing.</p> <p>2 Q In your opinion, Mr. Bost, is there adequate</p> <p>3 competition for the disposal of Class I wastewaters in</p> <p>4 Montgomery County?</p> <p>5 A No.</p> <p>6 Q Mr. Walker asked you a number of questions</p> <p>7 about your data or the data you used for your prefiled</p> <p>8 testimony. He asked you where you got it. Do you</p> <p>9 remember those questions?</p> <p>10 A Yes.</p> <p>11 Q And a number of times you tried to explain the</p> <p>12 data set that you used. Could you do that one more</p> <p>13 time? I'm trying to see exactly what data you looked at</p> <p>14 in performing your analysis.</p> <p>15 A In the context of the waste generation volumes,</p> <p>16 I used data from the TCEQ which were reported to the</p> <p>17 TCEQ by the regulated entities and compiled in a state</p> <p>18 database, which is available to the public, including</p> <p>19 consultants like myself.</p> <p>20 Q And then you took from that database or you</p> <p>21 reduced the database by -- as I understood it, you</p> <p>22 eliminated generators that were discharging to a POTW.</p> <p>23 Is that -- am I understanding that correctly?</p> <p>24 A Yes.</p> <p>25 Q So you had that --</p>
151	<p>1 element, then, as you would see it from a customer's</p> <p>2 perspective as to which facility they would send their</p> <p>3 waste?</p> <p>4 A Well, they may look at the operating history of</p> <p>5 a facility and its performance, but from a cost</p> <p>6 perspective, it's strictly hauling at that point.</p> <p>7 Q So if --</p> <p>8 A If you're assuming the quoted disposal prices</p> <p>9 are the same.</p> <p>10 Q And I thought you were asked questions about</p> <p>11 competition, and I think you made a comment that</p> <p>12 competition is good, if I remember your testimony this</p> <p>13 morning correctly.</p> <p>14 A Yes.</p> <p>15 Q And what did you mean when you said competition</p> <p>16 is good?</p> <p>17 A When there is limited supply and there's a</p> <p>18 greater demand, then, you know, basically charging --</p> <p>19 charges in the marketplace reflect that limited supply.</p> <p>20 And in this case, we're talking about there's a limited</p> <p>21 number of disposal facilities, so, you know, their</p> <p>22 profits can be very good. When there's -- when you have</p> <p>23 competition, then overall costs go down, and that helps</p> <p>24 the economy in terms of lowering the costs of operation</p> <p>25 and provides better multipliers with an economic context</p>	153	<p>1 A In terms of the database, I may have also</p> <p>2 eliminated hazardous generators. Although, you know,</p> <p>3 that does represent an assumed reduction of sources. I</p> <p>4 also made the assumption of -- to narrow it down of</p> <p>5 eliminating those people currently discharging to the</p> <p>6 city of Conroe. Although, that, again, is not</p> <p>7 necessarily a predetermined outcome. With availability</p> <p>8 of alternative disposal, some of those discharges might</p> <p>9 be hauled instead to TexCom.</p> <p>10 Q So -- and that's what I'm trying to understand,</p> <p>11 and please correct me if I'm wrong.</p> <p>12 But the data set you looked at were</p> <p>13 Class I non-hazardous wastewater generators that were</p> <p>14 currently hauling their wastewater to a disposal</p> <p>15 facility. Is that accurate?</p> <p>16 A Yes, off-site disposers.</p> <p>17 Q So you did not look at Class I non-hazardous</p> <p>18 wastewater generators in Montgomery County that are</p> <p>19 discharging to POTW. Is that true?</p> <p>20 A That's correct.</p> <p>21 Q You also mentioned something -- you referred to</p> <p>22 it, I believe, as a small quantity generator. Could you</p> <p>23 elaborate further on what a small quantity generator is?</p> <p>24 A Well, a small quantity generator has both a lay</p> <p>25 term and also a regulatory term.</p>

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154	<p>1 But in the regulatory arena, a small</p> <p>2 quantity generator is a generator that generates a</p> <p>3 relatively small quantity and fits within the guidance</p> <p>4 of that -- of a lower amount of regulatory requirements</p> <p>5 on them because of their size.</p> <p>6 Q All right. And how were you using the term</p> <p>7 when you testified earlier? How were you using small</p> <p>8 quantity generators when you were talking with</p> <p>9 Mr. Walker?</p> <p>10 A I was discussing those that both are required</p> <p>11 to report and those that are not required to report or</p> <p>12 are not aware of their requirement to report.</p> <p>13 Q Let's talk about the latter category, folks</p> <p>14 that are not required to report presumably to the TCEQ</p> <p>15 the quantity of generation of Class I non-hazardous</p> <p>16 wastewater. Can you keep that in mind?</p> <p>17 A Yes.</p> <p>18 Q Tell me your understanding of the number of</p> <p>19 those entities based on -- and explain what you would</p> <p>20 reference to identify the number of small quantity</p> <p>21 generators in the context of our discussion.</p> <p>22 A Well, the way to get a handle on the number is</p> <p>23 to look at, you know, commercial entities that have</p> <p>24 operations in a given area. One can look at the nature</p> <p>25 of their operations and identify those that, because of</p>	156
155	<p>1 their operations, generate liquid waste.</p> <p>2 Q And if I'm understanding correctly, what you're</p> <p>3 saying is that there -- outside of the reports or</p> <p>4 references or -- excuse me -- records you looked at at</p> <p>5 TCEQ, there is a number of entities that generate</p> <p>6 Class I non-hazardous wastewater that aren't required to</p> <p>7 report. Is that true?</p> <p>8 A Yes.</p> <p>9 Q What do they do?</p> <p>10 A Or are not aware of their requirement to</p> <p>11 report.</p> <p>12 Q Okay. Well, let's not count in the wrongdoers.</p> <p>13 Let's just count in the folks that just aren't required</p> <p>14 to report based on current regulation. With respect to</p> <p>15 those folks, do you know what happens to their Class I</p> <p>16 wastewater, or do you have an opinion as to what would</p> <p>17 happen to their Class I non-hazardous wastewater?</p> <p>18 A Mostly that wastewater either goes into a</p> <p>19 sanitary sewer or runs off the property.</p> <p>20 Q Is that the same as saying it goes to the POTW</p> <p>21 when it goes into the sanitary sewer?</p> <p>22 A Yes.</p> <p>23 Q To the best of your knowledge, are there</p> <p>24 pretreatment requirements for small quantity dischargers</p> <p>25 to POTWs?</p>	157

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158	<p>1 less wastewater to inject, then, if they decide that</p> <p>2 they're happy with their -- sorry about the happy</p> <p>3 comment -- that they are satisfied with their current</p> <p>4 business arrangement and their current disposal</p> <p>5 mechanism?</p> <p>6 A I'm sorry. I didn't follow the question.</p> <p>7 Q Sure, and I understand. I took a little detour</p> <p>8 on you there.</p> <p>9 Let's suppose that Huntsman and Chevron</p> <p>10 Phillips, as Mr. Walker suggested earlier, that</p> <p>11 they're -- I'm struggling about saying giddy -- but that</p> <p>12 they are satisfied in a business way with their current</p> <p>13 disposal mechanisms. Okay? You with me there?</p> <p>14 A Okay.</p> <p>15 Q All right. So no matter how close, if TexCom</p> <p>16 was right across the street, which, you know, it is,</p> <p>17 that they would not deviate from their current contracts</p> <p>18 or whatever arrangements they have and they would</p> <p>19 continue to dispose of their wastewater in Liberty</p> <p>20 County or wherever else they're going. Follow me so</p> <p>21 far?</p> <p>22 A Yes.</p> <p>23 Q All right. So would you expect, then, in the</p> <p>24 context of the this hypothetical, TexCom wouldn't have</p> <p>25 those companies as customers?</p>	160	<p>1 Dr. Ross is lamenting the day that he ever met me, as he</p> <p>2 sits out in front of his facility, there would be no</p> <p>3 threat to drinking water either. Right? Less injected,</p> <p>4 less threat. Would you agree?</p> <p>5 A I wouldn't necessarily say that there's less</p> <p>6 threat to drinking water because currently, we have</p> <p>7 wastewaters being discharged to sanitary sewers. We</p> <p>8 have runoff in an area that's known to be a recharge</p> <p>9 area. With population increase -- even if we don't</p> <p>10 assume population increase -- you assume no population</p> <p>11 increase -- even with no population increase, the</p> <p>12 continued discharge and seepage from sanitary sewers,</p> <p>13 some people call it ex-filtration, the continued runoff</p> <p>14 and soaking into the ground continues to add a loading</p> <p>15 to the recharge area, and that would represent a</p> <p>16 continuing threat which is why people are doing the</p> <p>17 watershed planning and looking at developing alternative</p> <p>18 regulatory mechanisms for addressing it --</p> <p>19 Q I probably should clarify that.</p> <p>20 A -- which are on the horizon.</p> <p>21 Q I'm sorry. Are you finished?</p> <p>22 A Which are on the horizon.</p> <p>23 Q Probably should clarify my question, that the</p> <p>24 threat I was talking about is from the TexCom facility.</p> <p>25 A Then there's no threat.</p>
159	<p>1 A Yes.</p> <p>2 Q Would you expect, also, then, that it would</p> <p>3 have difficulty meeting or injecting a large volume of</p> <p>4 waste -- of Class I non-hazardous -- try that again.</p> <p>5 All other things staying the same,</p> <p>6 everybody's happy, nobody wants to go anywhere else,</p> <p>7 POTW's adequate, population stays the same, TexCom</p> <p>8 wouldn't have wastewater to inject into its Class I</p> <p>9 non-hazardous wastewater injection well. Is that</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q And TexCom would have been foolish to engage in</p> <p>13 this commercial venture. Is that correct?</p> <p>14 A Yes.</p> <p>15 Q All right. But either way, as the core purpose</p> <p>16 of this proceeding, certainly there wouldn't be more</p> <p>17 traffic if Dr. Ross is just sitting out there in an easy</p> <p>18 chair waiting for his customers to roll in if the</p> <p>19 economics don't work for some producers of Class I</p> <p>20 non-hazardous wastewater. Would you agree?</p> <p>21 A Yes, for the scenario that no waste goes there,</p> <p>22 there's no increased traffic relative to disposal of</p> <p>23 that location.</p> <p>24 Q And similarly, there would be no threat to</p> <p>25 drinking water. Since nothing is being injected and</p>	161	<p>1 Q That's mine, hopefully.</p> <p>2 MR. RILEY: Just a second, Judge.</p> <p>3 Q (BY MR. RILEY) My colleague has suggested</p> <p>4 another couple questions.</p> <p>5 You mentioned in your answer, the last</p> <p>6 answer you gave me -- I'm sorry. Penultimate answer,</p> <p>7 not the last answer -- you mentioned that you have some</p> <p>8 information about tightening regulations in context of</p> <p>9 POTW, I think was -- is the way you were expressing it.</p> <p>10 Could you explain what you mean? What do you mean by</p> <p>11 tightening regulations?</p> <p>12 A Well, what we're -- what is happening is that</p> <p>13 we're recognizing that with population growth and</p> <p>14 commercial development, that there's inherently greater</p> <p>15 loadings into receiving streams. And the receiving</p> <p>16 streams, though, haven't increased in size. They have</p> <p>17 finite assimilative capacity, and so there is a need to</p> <p>18 tighten discharge requirements as a result of that.</p> <p>19 And there's an ongoing process. It's not</p> <p>20 as well funded as some would like, where basically</p> <p>21 different areas are examining the need for changes to</p> <p>22 loadings and placing limitations on loadings and</p> <p>23 receiving streams. In the context of the area we're</p> <p>24 talking about, the San Jacinto River Basin, you know,</p> <p>25 the county for practical purposes drains into two water</p>

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162	<p>1 supply bodies, and there's a great concern in terms of</p> <p>2 long-term future and the need to maintain those water</p> <p>3 supply bodies as viable and economically sustainable and</p> <p>4 healthy water supplies for the area.</p> <p>5 MR. RILEY: Thank you. Pass the witness.</p> <p>6 JUDGE EGAN: Okay. I'm going to go around</p> <p>7 and see if anybody has any recross on the redirect. Let</p> <p>8 me -- redirect, Lone Star?</p> <p>9 MR. HILL: Thank you, Your Honor. I have</p> <p>10 a couple of questions.</p> <p>11 RE CROSS-EXAMINATION</p> <p>12 BY MR. HILL:</p> <p>13 Q Mr. Bost, make sure I understand your</p> <p>14 testimony.</p> <p>15 Do I understand you correctly to say that</p> <p>16 the potential waste capacity for the proposed TexCom</p> <p>17 well will come from disposal streams that are currently</p> <p>18 being disposed of in Montgomery County today? Is</p> <p>19 that --</p> <p>20 A If I --</p> <p>21 Q Do I understand your testimony correctly?</p> <p>22 A If I understand your question correctly,</p> <p>23 there's an expectation of the sources for waste that</p> <p>24 would be disposed of the TexCom well coming from</p> <p>25 Montgomery County.</p>	164	<p>1 Montgomery County? Yes or no?</p> <p>2 A If your question is, is it being disposed --</p> <p>3 Q My question could --</p> <p>4 A -- of now?</p> <p>5 Q -- not be more clear.</p> <p>6 A Then the answer is yes.</p> <p>7 Q Let me rephrase or ask the question again to</p> <p>8 make sure that we've got a clear answer.</p> <p>9 Is there or is there not today an unmet</p> <p>10 need in Montgomery County for Class I non-hazardous</p> <p>11 industrial wastewater disposal?</p> <p>12 A The answer is, no, from a competitive</p> <p>13 perspective and the need to provide additional</p> <p>14 generation. If the question is intended to mean, is</p> <p>15 there -- is all the waste currently being disposed of --</p> <p>16 excuse me -- in defining the word "need" --</p> <p>17 Q If you need to take a drink, go ahead.</p> <p>18 A (Witness complying.)</p> <p>19 -- then the answer is yes.</p> <p>20 Q (BY MR. HILL) I appreciate it, Mr. Bost.</p> <p>21 MR. HILL: Pass the witness.</p> <p>22 JUDGE EGAN: Denbury?</p> <p>23 MR. SENCENBAUGH: Nothing further, Your</p> <p>24 Honor.</p> <p>25 JUDGE EGAN: Individual protestants?</p>
163	<p>1 Q Okay. The waste stream, then, that would be</p> <p>2 diverted from the current disposal sources to the</p> <p>3 proposed TexCom well, if they were to get their permit,</p> <p>4 currently is a revenue generator for those facilities</p> <p>5 that are licensed in -- to dispose of those wastes today</p> <p>6 and that are, in fact, disposing of those wastes today,</p> <p>7 are they not?</p> <p>8 A Yes.</p> <p>9 Q Have you done an economic analysis of the</p> <p>10 impact to reducing the waste streams to those current</p> <p>11 disposers to the TexCom proposed well?</p> <p>12 A I have not done the quantitative analysis.</p> <p>13 I've done a qualitative review, as I've discussed</p> <p>14 earlier.</p> <p>15 Q Ultimately, Mr. Bost, make sure I understand</p> <p>16 correctly. Is there or is there not today a need in</p> <p>17 Montgomery County -- let me rephrase that question.</p> <p>18 Is there or is there not today an unmet</p> <p>19 need in Montgomery County for Class I non-hazardous</p> <p>20 industrial wastewater disposal?</p> <p>21 A There is a need from our economical disposal --</p> <p>22 Q Is there --</p> <p>23 A -- in Montgomery County.</p> <p>24 Q -- or is there not today an unmet need for</p> <p>25 Class I non-hazardous industrial wastewater disposal in</p>	165	<p>1 MR. FORSBERG: I have just a couple</p> <p>2 questions, Your Honor.</p> <p>3 RE CROSS-EXAMINATION</p> <p>4 BY MR. FORSBERG:</p> <p>5 Q Mr. Bost, on page, I think, 6 -- 17 and 18, you</p> <p>6 identify a number of companies that are currently</p> <p>7 accepting the waste that's being generated in Montgomery</p> <p>8 County. Is that correct?</p> <p>9 A Yes, on the bottom of Page 17, the top of Page</p> <p>10 18.</p> <p>11 Q Is there -- do you have any information or</p> <p>12 evidence that would suggest that any of these entities</p> <p>13 are acting in anti-competitive ways towards waste</p> <p>14 generators in Montgomery County?</p> <p>15 A Anti-competitive ways, no.</p> <p>16 Q Do you have any evidence or opinion as to</p> <p>17 whether they're overcharging waste generators in</p> <p>18 Montgomery County?</p> <p>19 A I don't know what you mean by "overcharging."</p> <p>20 They are charging what they're charging, and some people</p> <p>21 might view the current disposal rates that are in the</p> <p>22 marketplace as an overcharging and some may, you know,</p> <p>23 go ahead and say, "Well, they're competitive rates based</p> <p>24 upon the current marketplace."</p> <p>25 Q On Page 16 of your prefiled testimony and going</p>

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166	<p>1 back to something you testified about a few minutes ago,</p> <p>2 this one-third of the waste that Montgomery County</p> <p>3 generates, are you basing that on the facility, the</p> <p>4 TexCom facility, operating 24 hours a day, seven days a</p> <p>5 week, 365 days a year?</p> <p>6 A My calculation was based upon that simple</p> <p>7 evaluation.</p> <p>8 Q What --</p> <p>9 A In terms of the plant operation, you know, it's</p> <p>10 350 gallons per minute, maximum allowable rate. Their</p> <p>11 plant operation is about 16 hours a day.</p> <p>12 Q So the 500,000 gallons per 24 hours, which</p> <p>13 equates to a third of the waste generated, is not right</p> <p>14 because it only operates 16 hours a day?</p> <p>15 A It's an approximate value to illustrate the</p> <p>16 approximate relationship of the capacity of the TexCom</p> <p>17 facility to that adjusted volume of non-hazardous</p> <p>18 Class I wastewater that's not going to POTWs, but is</p> <p>19 going off-site at the present time in Montgomery County.</p> <p>20 Q Well, I'm trying to understand this calculation</p> <p>21 you have on Page 16, then.</p> <p>22 Should the correct calculation be</p> <p>23 350 gallons per minute times 16-hour days?</p> <p>24 A One could do a calculation in that matter.</p> <p>25 This is -- I ran it off to 500,000 gallons per day for</p>	168	<p>1 Q (BY MR. FORSBERG) So if we -- excuse me while</p> <p>2 I try to get my calculator.</p> <p>3 UNIDENTIFIED PERSON: Could you speak up,</p> <p>4 please?</p> <p>5 JUDGE EGAN: Could everyone? I thought it</p> <p>6 was just my hearing, but everyone could either move the</p> <p>7 mic closer or speak up.</p> <p>8 Q (BY MR. FORSBERG) If we take 350 gallons per</p> <p>9 minute, multiply it times 60 minutes, and then multiply</p> <p>10 it times 16 hours, the real number is 336,000 gallons.</p> <p>11 Does that sounds right? So you rounded from 336 to</p> <p>12 500,000? Is that what I'm understanding?</p> <p>13 A Yes.</p> <p>14 Q Okay.</p> <p>15 MR. FORSBERG: Nothing further. Thank</p> <p>16 you.</p> <p>17 JUDGE EGAN: Okay.</p> <p>18 MR. WALKER: I have no other questions,</p> <p>19 Your Honor.</p> <p>20 JUDGE EGAN: Mr. Humphrey?</p> <p>21 MR. HUMPHREY: I'll pass, Your Honor.</p> <p>22 JUDGE EGAN: Ms. Goss?</p> <p>23 MS. GOSS: Executive Director passes</p> <p>24 witness. Thank you.</p> <p>25 MR. RILEY: I just have one or two on the</p>
167	<p>1 the purpose of the -- on the face of it, comparison.</p> <p>2 Q Why would you do that when you know the</p> <p>3 facility is going to operate 16 hours a day? Does it</p> <p>4 make the numbers look inflated?</p> <p>5 A No. It's reflecting the relative accuracy of</p> <p>6 the evaluation. You know, the -- we have 1.6 million</p> <p>7 gallons. It's -- versus 500,000 gallons. The</p> <p>8 approximate ratio is one-third.</p> <p>9 Q But it's never going to be 500,000 gallons</p> <p>10 because it's not operating 24 hours a day. Is that</p> <p>11 correct?</p> <p>12 A The -- it -- you know, this is how I did the</p> <p>13 calculation.</p> <p>14 Q You did it wrong. Right?</p> <p>15 MR. RILEY: Objection. Did it wrong?</p> <p>16 Q (BY MR. FORSBERG) Well, I mean, should it --</p> <p>17 why did you do 500,000 gallons?</p> <p>18 A It's a rounded-off number.</p> <p>19 Q From?</p> <p>20 A For the purpose of approximate ratio. You</p> <p>21 know, the point is that TexCom facility --</p> <p>22 MR. FORSBERG: Objection. I didn't ask</p> <p>23 what the point was.</p> <p>24 JUDGE EGAN: Just listen to his questions</p> <p>25 and answer that.</p>	169	<p>1 last point by Mr. Forsberg.</p> <p>2 JUDGE EGAN: All right.</p> <p>3 FURTHER REDIRECT EXAMINATION</p> <p>4 BY MR. RILEY:</p> <p>5 Q If I understand the point of your testimony, is</p> <p>6 you're trying to show that there's adequate -- or</p> <p>7 there's adequate generation of Class I non-hazardous</p> <p>8 wastewater in Montgomery County.</p> <p>9 MR. WALKER: I object to the leading</p> <p>10 question, Your Honor.</p> <p>11 MR. FORSBERG: The same objection.</p> <p>12 MR. RILEY: Okay. I'll go at it</p> <p>13 differently.</p> <p>14 JUDGE EGAN: Rephrase?</p> <p>15 MR. RILEY: Sure.</p> <p>16 Q (BY MR. RILEY) Mr. Forsberg calculated a</p> <p>17 number of 336,000. Do you have a calculator with you?</p> <p>18 A No.</p> <p>19 MR. FORSBERG: I have one, if you need it.</p> <p>20 MR. RILEY: No, I come well prepared. May</p> <p>21 I?</p> <p>22 JUDGE EGAN: Yes, you may.</p> <p>23 Q (BY MR. RILEY) Can you take the percentage of,</p> <p>24 let's see, 1.6 million gallons, what percentage is</p> <p>25 336,000 gallons?</p>

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170	<p>1 A (Witness calculating.) I'm having trouble --</p> <p>2 Q With my calculator?</p> <p>3 A -- with your calculator.</p> <p>4 Q I'm sorry. Oh, no. Anybody else want to chime</p> <p>5 in? What's 336,000?</p> <p>6 A I don't know how to clear your calculator.</p> <p>7 Q Neither do I. I think it's the C, C button.</p> <p>8 MR. FORSBERG: I believe it's 21 percent,</p> <p>9 but I could be wrong.</p> <p>10 Q (BY MR. RILEY) All right. Let's go with that.</p> <p>11 MR. RILEY: Thank you, Mr. Forsberg.</p> <p>12 MR. FORSBERG: You're welcome.</p> <p>13 Q (BY MR. RILEY) Let's say, hypothetically, that</p> <p>14 336,000 is 21 percent. If I understand correctly,</p> <p>15 please tell me if I'm wrong --</p> <p>16 A In my head, that's approximately correct.</p> <p>17 Q All right. That would mean that TexCom could</p> <p>18 handle less of the waste, Class I non-hazardous</p> <p>19 wastewater. Generated in Montgomery County as a matter</p> <p>20 of percentage?</p> <p>21 A Yes.</p> <p>22 Q Thank you.</p> <p>23 MR. FORSBERG: I have one additional</p> <p>24 follow-up question just to that point.</p> <p>25 JUDGE EGAN: Let me make sure nobody --</p>	172	<p>1 JUDGE EGAN: Mr. Walker?</p> <p>2 MR. WALKER: Nothing further, Your Honor.</p> <p>3 JUDGE EGAN: Mr. Humphrey?</p> <p>4 MR. HUMPHREY: Nothing further, Your</p> <p>5 Honor.</p> <p>6 JUDGE EGAN: Ms. Goss?</p> <p>7 MS. GOSS: The Executive Director has no</p> <p>8 questions.</p> <p>9 JUDGE EGAN: Then this witness may be</p> <p>10 excused.</p> <p>11 WITNESS BOST: Thank you.</p> <p>12 JUDGE EGAN: It's about three o'clock.</p> <p>13 Would y'all like to take a short comfort break? How</p> <p>14 about 3:15, we come back?</p> <p>15 MR. RILEY: Be great. Thank you.</p> <p>16 (Recess: 2:56 p.m. to 3:16 p.m.)</p> <p>17 JUDGE EGAN: Let's go back on the record.</p> <p>18 You had a matter that you wished to</p> <p>19 discuss?</p> <p>20 MS. GOSS: Yes. This is -- we're talking</p> <p>21 about the briefing schedule on this issue with the</p> <p>22 motion -- Denbury's motion this morning.</p> <p>23 JUDGE EGAN: Yes.</p> <p>24 MS. GOSS: And because the Denbury</p> <p>25 pleading on this notice presents a question of TCEQ</p>
171	<p>1 MR. FORSBERG: Oh, I'm sorry.</p> <p>2 JUDGE EGAN: Is that all the questions you</p> <p>3 have?</p> <p>4 MR. RILEY: That's all I have.</p> <p>5 JUDGE EGAN: Lone Star?</p> <p>6 MR. HILL: No further questions, Your</p> <p>7 Honor.</p> <p>8 JUDGE EGAN: No questions?</p> <p>9 All right. Go ahead, Mr. Forsberg.</p> <p>10 FURTHER RECROSS-EXAMINATION</p> <p>11 BY MR. FORSBERG:</p> <p>12 Q If TexCom can handle less of the waste being</p> <p>13 produced in Montgomery County, then does not more of the</p> <p>14 waste need to be put on trucks and headed to other</p> <p>15 counties?</p> <p>16 A If there is -- if the facility cannot handle</p> <p>17 all of the waste, that means there's still some that</p> <p>18 would be hauled away.</p> <p>19 Q Which would increase the risk of accidents as</p> <p>20 opposed to if the facility could handle a third of the</p> <p>21 waste in Montgomery County?</p> <p>22 A Yes.</p> <p>23 MR. FORSBERG: Thank you. Nothing</p> <p>24 further.</p> <p>25 MR. RILEY: None. Thank you.</p>	173	<p>1 jurisdiction, could also impact future TCEQ proceedings</p> <p>2 and notice, we would request the parties be provided the</p> <p>3 full five days required to file a response under SOAH</p> <p>4 rules. That would be 155.305(c). In this case, we're</p> <p>5 struggling with drafting a response because we're here,</p> <p>6 and we were wondering if it would be possible -- we're</p> <p>7 pleading with the Court if we might be able to be given</p> <p>8 until Monday.</p> <p>9 JUDGE EGAN: Does anybody have a problem</p> <p>10 with that?</p> <p>11 MS. MENDOZA: Your Honor, the Executive</p> <p>12 Director does seem to believe that this presents an</p> <p>13 issue of jurisdiction, and that's -- once again, we're</p> <p>14 going to continue with a hearing for which there is a</p> <p>15 jurisdictional question. This is a tremendous</p> <p>16 investment of resources for all of the parties in this,</p> <p>17 and if there is not jurisdiction, we should take the</p> <p>18 time to do this.</p> <p>19 I had somewhat anticipated this and asked</p> <p>20 if the parties wanted to delay so people could really</p> <p>21 devote themselves to the briefing, and I still suggest</p> <p>22 that perhaps we should delay and let people devote</p> <p>23 themselves to the briefing on a jurisdictional issue.</p> <p>24 JUDGE EGAN: Anyone else have any</p> <p>25 comments?</p>

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174	<p>1 MR. RILEY: No, Your Honor.</p> <p>2 I suppose -- I'm sorry. I apologize.</p> <p>3 JUDGE EGAN: You do have a problem?</p> <p>4 MR. RILEY: I do have just a brief</p> <p>5 rejoinder, and it is stating the obvious.</p> <p>6 We have dispatched two of our attorneys to</p> <p>7 go and work on the brief. You'll notice that we are</p> <p>8 down to me and Mr. Lee for the afternoon. So we're</p> <p>9 prepared to keep the schedule set out by Your Honors</p> <p>10 earlier, and we'll work diligently toward that end.</p> <p>11 We disagree that because the question is</p> <p>12 raised about jurisdiction, that means we have a</p> <p>13 jurisdictional question. It just means that counsel</p> <p>14 elected to file a plea to the jurisdiction contrary to</p> <p>15 SOAH's rules the morning we began testimony in the case.</p> <p>16 It is counsel's action that has caused us to even</p> <p>17 consider postponing the hearing, so they should not</p> <p>18 benefit from their election to file the morning the</p> <p>19 testimony began.</p> <p>20 I don't disagree -- and I have worked at</p> <p>21 the TCEQ. I don't disagree that it's difficult for</p> <p>22 staff to devote itself to different causes and different</p> <p>23 issues, and so certainly, I support the Executive</p> <p>24 Director having additional time; but I don't think that</p> <p>25 lends credibility to the motion that Ms. Mendoza's</p>	176	<p>1 The real issue here is Mr. Forsberg may</p> <p>2 not have other associates or be able to dispatch, but</p> <p>3 he's been with this case from the outset and has never</p> <p>4 raised this issue. So benefiting from the late filing,</p> <p>5 it should not inure the benefit of the protesting</p> <p>6 parties.</p> <p>7 MR. FORSBERG: We made the mistake of</p> <p>8 assuming that TexCom was being forthright in their --</p> <p>9 JUDGE EGAN: We understand the arguments.</p> <p>10 We're going to go ahead and give the Executive Director</p> <p>11 until Monday to file a response. Do you need -- you're</p> <p>12 planning to still meet the original deadline?</p> <p>13 MR. RILEY: We can meet the original</p> <p>14 deadline if that's helpful. I could certainly use extra</p> <p>15 time, too, but it's -- if we're not going to decide the</p> <p>16 issue, then --</p> <p>17 JUDGE EGAN: Make it for Monday for</p> <p>18 everybody. That way --</p> <p>19 MR. RILEY: Thank you, Judge.</p> <p>20 JUDGE EGAN: -- everyone that's here</p> <p>21 present can work through the weekend, if they wish.</p> <p>22 Okay.</p> <p>23 Would you like to call your first</p> <p>24 witness -- I mean, your next witness? I'm sorry. We're</p> <p>25 already finished with the first one.</p>
175	<p>1 brought before you, again, at a very late hour in the</p> <p>2 case. So I think they should have their time.</p> <p>3 We're going to meet your original</p> <p>4 schedule, and we're prepared to call the next witness.</p> <p>5 MR. FORSBERG: Your Honors, if I might</p> <p>6 just say something brief?</p> <p>7 JUDGE EGAN: I just want to --</p> <p>8 MR. FORSBERG: Okay.</p> <p>9 JUDGE EGAN: I'm sorry. Mr. Forsberg?</p> <p>10 MR. FORSBERG: Just briefly, Your Honors,</p> <p>11 I don't have -- some of us don't have the luxury of</p> <p>12 having other attorneys and associates to send off to do</p> <p>13 their research for them, which, you know, would be</p> <p>14 wonderful. I -- you know, possibly, as a suggestion, I</p> <p>15 mean, if we're already taking half of tomorrow off,</p> <p>16 maybe we should convene for a day and keep the briefing</p> <p>17 schedule. I don't know if that would help. I'm just</p> <p>18 throwing out an alternative because it seems like a</p> <p>19 jurisdictional issue needs to be addressed before the</p> <p>20 hearing is over, if, you know, they need additional</p> <p>21 time. I mean, Mr. Riley, you know, has an important</p> <p>22 function tomorrow that we're already taking the</p> <p>23 afternoon off, and it would probably give him more time</p> <p>24 to prepare for his thing tomorrow.</p> <p>25 MR. RILEY: I'm already prepared.</p>	177	<p>1 MR. RILEY: Yes, Your Honor. The</p> <p>2 Applicant calls Mr. Greg Casey, who is seated at the</p> <p>3 witness table.</p> <p>4 JUDGE EGAN: Would you swear Mr. Casey in?</p> <p>5 (Witness sworn)</p> <p>6 MR. RILEY: May I, Your Honor?</p> <p>7 JUDGE EGAN: Yes, you may.</p> <p>8 MR. RILEY: Thank you.</p> <p>9 GREG CASEY,</p> <p>10 having been first duly sworn, testified as follows:</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY MR. RILEY:</p> <p>13 Q Good afternoon, Mr. Casey.</p> <p>14 A Hi.</p> <p>15 Q Mr. Casey, as part of your consulting duties</p> <p>16 for TexCom and preparing this application and in -- with</p> <p>17 respect to this proceeding, have you prepared prefiled</p> <p>18 testimony?</p> <p>19 A Yes, I have.</p> <p>20 Q Before you are a series of binders. Are you</p> <p>21 able to find your prefiled testimony and associated</p> <p>22 exhibits in the binders in front of you?</p> <p>23 A Yes, I have.</p> <p>24 Q Am I correct that your prefiled testimony has</p> <p>25 been labeled TexCom Exhibit No. 84, and the associated</p>

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<p style="text-align: right;">178</p> <p>1 attachments are 85 through 91?</p> <p>2 A That is correct.</p> <p>3 Q And I realize this is live action, so could you</p> <p>4 take a moment, though, and review the record copy and</p> <p>5 just see on a survey whether it appears complete and</p> <p>6 whether all the exhibits are attached?</p> <p>7 A (Witness reviewing documents.) Yes, they seem</p> <p>8 to all be here.</p> <p>9 Q All right. Do you adopt the prefiled testimony</p> <p>10 and associated exhibits as your prefiled testimony in</p> <p>11 this matter?</p> <p>12 A Yes, I do.</p> <p>13 MR. RILEY: Your Honor, we offer</p> <p>14 Applicant's Exhibits 84 through 91.</p> <p>15 JUDGE EGAN: Okay. Applicant's Exhibits</p> <p>16 84 through 91 are admitted.</p> <p>17 (Exhibit TexCom Nos. 84 through 91</p> <p>18 admitted)</p> <p>19 MR. RILEY: Pass the witness.</p> <p>20 JUDGE EGAN: Does Lone Star have any</p> <p>21 cross?</p> <p>22 MR. HILL: The District does. Thank you,</p> <p>23 Your Honor.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">180</p> <p>1 characteristics of the Cockfield Formation, and</p> <p>2 particularly, your assessment of the characteristics of</p> <p>3 that fault.</p> <p>4 JUDGE EGAN: Mr. Hill, can you move the</p> <p>5 microphone a little bit closer? I'm having trouble</p> <p>6 hearing you.</p> <p>7 MR. HILL: Is this better?</p> <p>8 JUDGE WALSTON: Scoot it even closer, if</p> <p>9 you can.</p> <p>10 MR. HILL: I'm trying to avoid the</p> <p>11 distraction we had earlier.</p> <p>12 JUDGE EGAN: That or speak up real loud.</p> <p>13 MR. HILL: I'll try to do both.</p> <p>14 JUDGE EGAN: Okay. Thank you.</p> <p>15 Q (BY MR. HILL) Do you have in front of you</p> <p>16 TexCom Exhibit 49, which is your prefiled testimony from</p> <p>17 the original hearing in this matter?</p> <p>18 A 49?</p> <p>19 Q TexCom Exhibit 49. It was the prefiled</p> <p>20 testimony that you submitted in the first hearing on</p> <p>21 this matter.</p> <p>22 A No, I don't have it in front of me right now.</p> <p>23 Q All right. Do you remember providing testimony</p> <p>24 that the EW-4400-S Fault was non-transmissive in the</p> <p>25 horizontal direction?</p>
<p style="text-align: right;">179</p> <p>1 CROSS-EXAMINATION</p> <p>2 BY MR. HILL:</p> <p>3 Q Good afternoon, Mr. Casey. I've got some</p> <p>4 questions for you.</p> <p>5 But to make sure that we're on the same</p> <p>6 page about terminology, when I use the term "EW-4400-S</p> <p>7 fault," is there a particular fault that comes to mind</p> <p>8 when I use that term?</p> <p>9 A Yes, there is.</p> <p>10 Q Could -- would you mind, just for my benefit,</p> <p>11 letting me know what fault comes to mind when I use that</p> <p>12 term?</p> <p>13 A Well, that's the fault that's been mapped to</p> <p>14 the south of TexCom's injection well that transects the</p> <p>15 area.</p> <p>16 Q Okay. It runs roughly to the east and west --</p> <p>17 or from east to west or vice versa?</p> <p>18 A Yes.</p> <p>19 Q 4400 feet to the south of the well?</p> <p>20 A Yes, it's approximately 4400 feet, runs roughly</p> <p>21 east to west.</p> <p>22 Q Great. I'd like to ask you some questions</p> <p>23 about testimony that you've provided both in your</p> <p>24 prefiled on the remand hearing and prefiled testimony</p> <p>25 previously in this hearing about your assessment of the</p>	<p style="text-align: right;">181</p> <p>1 A No. I believe our -- you know, without it in</p> <p>2 front of me, I can't, you know, be a hundred percent</p> <p>3 positive. But, you know, we've always, in our original</p> <p>4 application, stated that we believe the fault was</p> <p>5 transmissive in the horizontal direction.</p> <p>6 MR. HILL: May I approach the witness,</p> <p>7 Your Honor?</p> <p>8 JUDGE EGAN: Yes.</p> <p>9 Q (BY MR. HILL) Mr. Casey, I'm going to hand you</p> <p>10 what's been marked as TexCom Exhibit No. 49. Do you</p> <p>11 recognize that exhibit?</p> <p>12 A (Witness perusing document.) It appears to be</p> <p>13 my testimony from the first hearing.</p> <p>14 Q If I could, Mr. Casey, get you to turn to</p> <p>15 Page 33 of TexCom Exhibit 49.</p> <p>16 A Okay.</p> <p>17 Q And if you could read the complete sentence</p> <p>18 that starts on Line 13 through Line 16.</p> <p>19 A It says, "The lower, middle, and upper</p> <p>20 Cockfield members are potentially in communication at</p> <p>21 the fault. However, the fault movement probably caused</p> <p>22 smearing of the clay on the formation which would</p> <p>23 inhibit or eliminate fluid movement across the fault."</p> <p>24 Q Do you remember making that testimony in this</p> <p>25 case, Mr. Casey?</p>

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<p style="text-align: right;">182</p> <p>1 A Yes, sir.</p> <p>2 Q Okay. And, in fact, I appreciate you're</p> <p>3 reading the sentence before because it appears there's</p> <p>4 an important distinction there.</p> <p>5 In the sentence, it reads "The lower,</p> <p>6 middle, and upper Cockfield members are potentially in</p> <p>7 communication at the fault." You seem to be drawing a</p> <p>8 distinction between the potential communication and the</p> <p>9 probable non-transmissive nature of the fault in that</p> <p>10 statement, do you not?</p> <p>11 A Not quite sure what you mean by that question.</p> <p>12 Q Explain to me the difference in your mind</p> <p>13 between the potential for communication and the probable</p> <p>14 smearing of clay which would inhibit or eliminate fluid</p> <p>15 moving across the fault.</p> <p>16 A Well, with the layers being separated by a</p> <p>17 shell member, when the fault moved, you potentially get</p> <p>18 clay smeared across the sand face --</p> <p>19 Q Uh-huh.</p> <p>20 A -- which could, you know, slow down the flow of</p> <p>21 fluid as, you know, compared to a zone that hadn't had a</p> <p>22 fault and was just, you know, the same sand lens. It</p> <p>23 would have a slower movement across that area than you</p> <p>24 would in just a regular sand lens.</p> <p>25 Q Of course, you don't use the word "potential"</p>	<p style="text-align: right;">184</p> <p>1 the likelihood of the non-transmissive nature of the</p> <p>2 EW-4400-S Fault to the lower Cockfield today?</p> <p>3 A No. And all along, our contention has been</p> <p>4 that the fault is transmissive; but through this</p> <p>5 hearing, we have treated it as non-transmissive in our</p> <p>6 modeling.</p> <p>7 Q And just to make sure that I understand, when</p> <p>8 you state that the fault movement probably caused</p> <p>9 smearing on the formation which would inhibit or</p> <p>10 eliminate fluid moving across the fault, in your mind,</p> <p>11 that's a statement that the fault is, in fact,</p> <p>12 transmissive?</p> <p>13 A Yes. It's potentially transmissive, you know.</p> <p>14 Q Okay. Do you today believe that the</p> <p>15 permeability of the lower Cockfield Formation at WW --</p> <p>16 well, let me back up.</p> <p>17 When I use the phrase "WDW315," can I</p> <p>18 assume that you understand what that means?</p> <p>19 A Yes.</p> <p>20 Q Which is also the same well that's being</p> <p>21 applied for in this case as WDW410. Do you</p> <p>22 understand --</p> <p>23 A Yes, sir, that's correct.</p> <p>24 Q -- what I mean there?</p> <p>25 Okay. Do you today believe that the</p>
<p style="text-align: right;">183</p> <p>1 when you talk about the probability of smearing of the</p> <p>2 clay in the lower Cockfield across the fault in that</p> <p>3 statement, do you?</p> <p>4 A I said "probably" --</p> <p>5 Q Okay.</p> <p>6 A -- which to me is similar to potentially.</p> <p>7 Q Is it?</p> <p>8 A I mean, they are potentially in communication</p> <p>9 if the fault is transmissive, which is what I believe</p> <p>10 the sentence says.</p> <p>11 Q Do you believe that clay smearing at EW-4400-S</p> <p>12 Fault and the lower Cockfield -- or, rather, fault</p> <p>13 movement in the lower Cockfield at the EW-4400-S Fault</p> <p>14 probably caused smearing of the clay on the formation</p> <p>15 which would inhibit or eliminate movement across the</p> <p>16 fault?</p> <p>17 A I believe that's what the sentence says, yes,</p> <p>18 sir.</p> <p>19 Q I'm asking you if you maintain that that is</p> <p>20 your testimony?</p> <p>21 A Yes. The smearing could probably -- or excuse</p> <p>22 me -- the probable smearing of the clay could inhibit or</p> <p>23 eliminate fluid movement across the fault.</p> <p>24 Q Okay. It sounds like you're struggling with</p> <p>25 that statement. Do you have a different opinion about</p>	<p style="text-align: right;">185</p> <p>1 permeability of the lower Cockfield at WDW315 is 500</p> <p>2 millidarcies?</p> <p>3 A Yes.</p> <p>4 Q You do?</p> <p>5 A Yes. I believe it is, you know --</p> <p>6 Q Do you remember testifying previously before</p> <p>7 these ALJs that a fall-off test was the most appropriate</p> <p>8 method for determining the permeability of an injection</p> <p>9 interval?</p> <p>10 A Yes.</p> <p>11 Q And you, in fact, have conducted since that</p> <p>12 time a fall-off test, is that not right?</p> <p>13 A Yes, sir.</p> <p>14 Q And then as a result of that fall-off test, you</p> <p>15 came up with a permeability that was less than 500</p> <p>16 millidarcies. Isn't that correct?</p> <p>17 A Yes.</p> <p>18 Q And your testimony is that we are not to</p> <p>19 believe the results of that fall-off test. Is that</p> <p>20 correct?</p> <p>21 A No. The fall-off test is one picture in time</p> <p>22 of that reservoir. When you conduct the test, you know,</p> <p>23 there are, you know, issues within -- the wellbore</p> <p>24 conditions that can cause the results not to be what I</p> <p>25 believe they are.</p>

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186	<p>1 Q Mr. Casey, do you or do you not believe that</p> <p>2 the permeability that you purported to find through your</p> <p>3 fall-off test in September of 2009 is a valid</p> <p>4 permeability figure?</p> <p>5 A The permeability we determined is valid at that</p> <p>6 point in time, yes, sir.</p> <p>7 Q Okay. And your testimony here today is that</p> <p>8 the permeability of a rock is in flux?</p> <p>9 A No. The testing of the rock is what is in</p> <p>10 flux.</p> <p>11 Q And so it's testing protocol that drives a</p> <p>12 permeability determination. Is that your testimony?</p> <p>13 A Well, it's wellbore conditions. You know, when</p> <p>14 you run the test, you're running it at a -- you know, at</p> <p>15 that point in time, the condition that well is in at</p> <p>16 that time.</p> <p>17 Q And if I was asking you about the assessment of</p> <p>18 the conditions at the wellbore, I would appreciate that</p> <p>19 answer. But certainly, you've got to understand that</p> <p>20 we're talking about the permeability of the lower</p> <p>21 Cockfield out into the formation beyond the wellbore.</p> <p>22 Isn't that correct?</p> <p>23 A Yes.</p> <p>24 Q Okay. And so really, we're not talking about</p> <p>25 wellbore conditions when we try to determine what the</p>	188	<p>1 MR. HILL: And your objection is?</p> <p>2 JUDGE EGAN: What is the objection?</p> <p>3 MR. RILEY: The objection is counsel is</p> <p>4 mischaracterizing the prefiled testimony and the answers</p> <p>5 that the witness has just given. He asked him, "So your</p> <p>6 testimony is unreliable?" He explains this very topic</p> <p>7 in his prefiled testimony, including very consistently</p> <p>8 that he thinks the well -- or the permeability is higher</p> <p>9 than 190.6, but that was the result in his calculation.</p> <p>10 JUDGE EGAN: This is cross-exam. I'm</p> <p>11 going to overrule the objection.</p> <p>12 Go ahead.</p> <p>13 MR. HILL: Thank you, Your Honor.</p> <p>14 Q (BY MR. HILL) Mr. Casey, do I need to have the</p> <p>15 court reporter repeat the question?</p> <p>16 A Yes, if you could.</p> <p>17 MR. HILL: Do you mind?</p> <p>18 (The record was read as requested)</p> <p>19 A No, I don't think you discount the results.</p> <p>20 They are a picture of the well at that point in time, of</p> <p>21 the permeability as determined in the well at that point</p> <p>22 in time.</p> <p>23 Q (BY MR. HILL) And so when you are providing</p> <p>24 your expert services to potential clients or existing</p> <p>25 clients on geologic assessments of potential injection</p>
187	<p>1 permeability of a rock is at some distance beyond an</p> <p>2 injection wellbore?</p> <p>3 A The damage to the wellbore can cause the</p> <p>4 permeability response that you get in a test to be</p> <p>5 different than what the actual permeability is of the</p> <p>6 reservoir.</p> <p>7 Q And your testimony is, is that because of that</p> <p>8 damage, you are unable to develop a -- what you would</p> <p>9 consider to be a reliable determination of permeability</p> <p>10 in the lower Cockfield Formation?</p> <p>11 A I think for the purposes of what we were doing,</p> <p>12 we got a reasonable number.</p> <p>13 Q Okay. So, in fact, you don't believe that the</p> <p>14 permeability of the lower Cockfield at WDW315 is 500</p> <p>15 millidarcies?</p> <p>16 A I believe the permeability at Well 315 is</p> <p>17 higher than was shown in the fall-off test that we</p> <p>18 conducted.</p> <p>19 Q Okay.</p> <p>20 A I still believe that.</p> <p>21 Q Okay. And I guess, then, to sort of put the</p> <p>22 point out there, your testimony, then, is that we should</p> <p>23 discount your findings in your own fall-off test</p> <p>24 analysis?</p> <p>25 MR. RILEY: Objection.</p>	189	<p>1 intervals, as part of that discussion, do you tell them</p> <p>2 that the fall-off test analysis that you conduct is only</p> <p>3 as good as the day that the test was conducted?</p> <p>4 A When you run a number of fall-off tests in the</p> <p>5 same well, you do get differing permeabilities over</p> <p>6 time.</p> <p>7 Q How many fall-off tests does it typically take</p> <p>8 to cause a varied result in a permeability?</p> <p>9 A You could have a varied result in two tests.</p> <p>10 Q Okay. How long have you been conducting</p> <p>11 fall-off tests professionally, Mr. Casey?</p> <p>12 A Roughly 21 years in the UIC industry.</p> <p>13 Q Okay. Has there ever been a time when you have</p> <p>14 had confidence enough in the analysis you conducted from</p> <p>15 your own fall-off test that you were willing to tell a</p> <p>16 client with some confidence what the permeability of a</p> <p>17 potential injection interval was?</p> <p>18 A With all my clients that I deal with on, you</p> <p>19 know, injection well permeabilities, I usually give them</p> <p>20 an idea of what their permeability range is.</p> <p>21 Q Okay. So it's a range, then, that you're only</p> <p>22 able to narrow down to when you conduct a fall-off test</p> <p>23 analysis?</p> <p>24 A Right. It's strictly a function of, you know,</p> <p>25 you have a lot of variables in the equations where</p>

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<p style="text-align: right;">190</p> <p>1 you're trying to determine permeability. And, you know,</p> <p>2 a -- you're taking a picture in time, you know, and if</p> <p>3 points change just a little bit, it can change the</p> <p>4 permeability.</p> <p>5 Q Okay. So I'll just ask: What do you think the</p> <p>6 permeability of the lower Cockfield Formation is at</p> <p>7 WDW315?</p> <p>8 A I believe it's somewhere between, you know, 190</p> <p>9 and 500 millidarcies.</p> <p>10 Q Okay. And through the services that you</p> <p>11 provided to TexCom in September of 2009, you were unable</p> <p>12 to provide any more of an accurate result than that?</p> <p>13 A What I was able to provide them with is the</p> <p>14 result of the test, which we identified a permeability</p> <p>15 of 190 millidarcies.</p> <p>16 Q Okay. Let me change gears here a little bit,</p> <p>17 if I may, and direct your attention to TexCom</p> <p>18 Exhibit 89. And I believe you should have that in front</p> <p>19 of you.</p> <p>20 A Did you say 89?</p> <p>21 Q 89, yes, sir.</p> <p>22 JUDGE EGAN: Which TexCom volume is that?</p> <p>23 MR. LEE: 7.</p> <p>24 JUDGE WALSTON: It's the same volume as</p> <p>25 Mr. Bost's testimony.</p>	<p style="text-align: right;">192</p> <p>1 whether fault EW-4400-S is laterally transmissive."</p> <p>2 And the response provided there,</p> <p>3 Mr. Casey, says that "The workover and testing procedure</p> <p>4 has been changed to include a longer injection and fall</p> <p>5 off portion of the test in an effort to achieve a large</p> <p>6 radius of investigation in the formation and to</p> <p>7 determine formation permeability. This revised</p> <p>8 procedure is included in this submittal."</p> <p>9 Is that an accurate representation of that</p> <p>10 transmittal there?</p> <p>11 A Yes, it is.</p> <p>12 Q Okay. In fact, Mr. Casey, this -- on Page 3 of</p> <p>13 Exhibit No. 89, the transmittal here bears your</p> <p>14 signature and, in fact, bears your professional seal as</p> <p>15 an engineer. Is that correct?</p> <p>16 A Yes, it does.</p> <p>17 Q Okay. If I could ask you about the response</p> <p>18 that you penned there, Mr. Casey, is that response meant</p> <p>19 to -- that you intended to comply with the TCEQ's</p> <p>20 requirement to conduct a fall-off test with a radius of</p> <p>21 investigation of at least 5,400 feet from the wellbore?</p> <p>22 A That was the intent, yes, sir.</p> <p>23 Q Okay. So if I may turn your attention, then,</p> <p>24 to TexCom Exhibit No. 91, which should be in the same</p> <p>25 binder, and I specifically want to direct your attention</p>
<p style="text-align: right;">191</p> <p>1 A Okay.</p> <p>2 Q (BY MR. HILL) Have it in front of you?</p> <p>3 A Yes, sir.</p> <p>4 Q Okay. If I could direct your attention to</p> <p>5 Notice of Deficiency Response No. 7, which is Page 2 of</p> <p>6 Exhibit No. 89.</p> <p>7 A Okay.</p> <p>8 Q Read along with me here, if you will,</p> <p>9 Mr. Casey, and make sure and correct me if I get any of</p> <p>10 this wrong.</p> <p>11 Notice of Deficiency No. 7, which I</p> <p>12 understand to be a reiteration of a Notice of Deficiency</p> <p>13 that TCEQ had provided to TexCom as a result of your</p> <p>14 Class V authorization request that you submitted prior</p> <p>15 to the fall-off test you conducted in September 2009.</p> <p>16 Is that a fair representation of what we're dealing with</p> <p>17 here?</p> <p>18 A Yes.</p> <p>19 Q Okay. The request starts out, "Pressure</p> <p>20 Fall-off Test. Please revise the workover plan,</p> <p>21 Attachment B-1, to clarify that the pressure fall-off</p> <p>22 test will be conducted for a radius of investigation of</p> <p>23 at least 5,400 feet. Also clarify that the pressure</p> <p>24 fall-off test results will be used to determine the</p> <p>25 permeability of the injection interval and to determine</p>	<p style="text-align: right;">193</p> <p>1 to Page 25 of 27.</p> <p>2 A Okay.</p> <p>3 Q Very last paragraph of the page there, sentence</p> <p>4 starting "Using the fall-off test time of 75.5 hours</p> <p>5 yields a radius of investigation of approximately</p> <p>6 2,580 feet" -- or I'm sorry -- "2,583 feet." Did I read</p> <p>7 that correctly?</p> <p>8 A Yes, you did.</p> <p>9 Q Okay. Is it your testimony that in designing</p> <p>10 this fall-off test, that you believed that a fall-off</p> <p>11 test time of 75.5 hours would have yielded a radius of</p> <p>12 investigation of 5,400 feet from WDW315?</p> <p>13 A The test was originally designed to reach out</p> <p>14 to that distance through, you know -- well, we just</p> <p>15 calculated it based on our rates and our time of fall</p> <p>16 off, that we should be able to get at 5,000 -- you know,</p> <p>17 roughly whatever distance the fault is, 4400 feet. That</p> <p>18 was the goal of the test.</p> <p>19 Q So, in fact, yes, you did believe that a</p> <p>20 fall-off test of 75.5 hours would have yielded a radius</p> <p>21 of investigation of 5,400 feet?</p> <p>22 A That was the goal, yes, sir.</p> <p>23 Q Okay. You go on to say in the next sentence</p> <p>24 there that you had hoped -- or to the effect that that</p> <p>25 radius of investigation that you actually achieved was</p>

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194	<p>1 less than you hoped for. Could you be more explicit</p> <p>2 about what it was that you hoped for in designing a</p> <p>3 fall-off test of a 75.5-hour duration?</p> <p>4 A Well, the goal was to reach out to the fault.</p> <p>5 Q Okay. And as you developed the protocol for</p> <p>6 that test and made a determination that 75.5 hours would</p> <p>7 be a sufficient fall-off test length to reach the fault,</p> <p>8 can you help me understand what assumptions you used in</p> <p>9 arriving at that time figure for the length of time of</p> <p>10 your test?</p> <p>11 A Well, I worked with folks on my staff who do my</p> <p>12 fall-off analysis for me, and we looked at -- with 500</p> <p>13 millidarcies, you know, what -- the injection rate we</p> <p>14 were looking at, what potentially time it would take to</p> <p>15 one injection and fall-off to reach that distance. And</p> <p>16 that's, you know, how we designed the test.</p> <p>17 Q Okay. And when you determine the time, is it a</p> <p>18 mathematical computation, I would assume?</p> <p>19 A It's an estimation, yes, sir, using, you know,</p> <p>20 mathematical models.</p> <p>21 Q Okay. And what numbers or variables do you use</p> <p>22 to put into the mathematical model to tell you how long</p> <p>23 you need to run a test to reach a specific radius of</p> <p>24 investigation?</p> <p>25 A They put in the permeability and our, you know</p>	196	<p>1 JUDGE EGAN: Yes, you may.</p> <p>2 Q (BY MR. HILL) Mr. Casey, you have in front of</p> <p>3 you a April 25, 2008, Proposal for Decision that was</p> <p>4 issued by the judges in this case. Do you -- you might</p> <p>5 not have seen that document before, but do you at least</p> <p>6 see a document in front of you dated April 25, 2008?</p> <p>7 A Yes, I do.</p> <p>8 Q Okay. And if I could get you, sir, to flip</p> <p>9 into -- towards the back of that document, specifically</p> <p>10 to Special Condition No. 51. It's actually a proposed</p> <p>11 special condition.</p> <p>12 A I'd say if you have a better idea of where it's</p> <p>13 at than I do --</p> <p>14 MR. RILEY: Page 34.</p> <p>15 Q (BY MR. HILL) Have you seen that proposed</p> <p>16 special condition before, Mr. Casey?</p> <p>17 A No, I have not.</p> <p>18 Q Okay. If you look at Subpart B, I believe it</p> <p>19 is, there should be a reference there to a direction</p> <p>20 from the ALJs about conducting a fall-off test.</p> <p>21 A Okay.</p> <p>22 Q With a radius of investigation of 5,400 feet.</p> <p>23 A Okay. Let's see. That's under C.</p> <p>24 Q Did you find it?</p> <p>25 A Yes, I did.</p>
195	<p>1 injection rate and, you know, estimated the length of</p> <p>2 time to reach that -- you know, what it would take to</p> <p>3 reach that radius of investigation.</p> <p>4 Q Okay. And so is your testimony that you</p> <p>5 assumed a permeability of 500 millidarcies in reaching</p> <p>6 that 75.5 hour fall-off test time?</p> <p>7 A We used 500, yes, sir.</p> <p>8 Q Okay.</p> <p>9 MR. HILL: Your Honors, I'd like to ask</p> <p>10 the witness about one of the special conditions that you</p> <p>11 had proposed in your Proposal for Decision in this</p> <p>12 matter. I have your Proposal for Decision here, and I'm</p> <p>13 happy to introduce it as an exhibit. I would ask that</p> <p>14 you could take official notice of it since I don't know</p> <p>15 that there's any question about the veracity of the</p> <p>16 document. But I have one copy here that I'm happy to</p> <p>17 distribute among the parties to make sure that I'm not</p> <p>18 pulling a fast one on anybody, but --</p> <p>19 MR. RILEY: There's no question about the</p> <p>20 veracity of the document or Mr. Hill's representation</p> <p>21 that he has a complete copy.</p> <p>22 JUDGE EGAN: All right. We will take</p> <p>23 official notice of Proposal for Decision in this case.</p> <p>24 MR. HILL: Thank you, Ma'am. May I</p> <p>25 approach the witness?</p>	197	<p>1 Q Okay. Would you mind reading that subdivision</p> <p>2 of the proposed special condition into the record?</p> <p>3 A (As read) Following recompletion and prior to</p> <p>4 commencement of the waste injection, the reservoir</p> <p>5 characteristics and pressure response in the injection</p> <p>6 zone shall be monitored by means of a shutdown of the</p> <p>7 well for sufficient time to conduct a valid observation</p> <p>8 of the pressure fall-off curve, a fall-off test. The</p> <p>9 radius of investigation of the fall-off test should be</p> <p>10 at least 5400 feet.</p> <p>11 Q All right. In your prefiled testimony, TexCom</p> <p>12 Exhibit No. 84, specifically on Page 17 -- let me ask</p> <p>13 you this before I -- before I get you to flip through</p> <p>14 those pages, or while you're doing it.</p> <p>15 Do you understand -- in your mind, do you</p> <p>16 have an understanding of what that special condition was</p> <p>17 intended to accomplish?</p> <p>18 A Yes.</p> <p>19 Q Would you mind, for my benefit, letting me know</p> <p>20 what that is?</p> <p>21 A Well, the purpose of the condition was for us</p> <p>22 to test to try and determine the permeability out to the</p> <p>23 fault and whether the fault is transmissive or not.</p> <p>24 Q And whether the fault was transmissive. Is</p> <p>25 that right?</p>

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198	<p>1 A Correct.</p> <p>2 Q Okay. On Page 17, Lines 7 through 9.</p> <p>3 A Okay.</p> <p>4 Q Actually, if I may read the question to you</p> <p>5 there on Line 1.</p> <p>6 "Is the September 2009 fall-off test the</p> <p>7 same type of test that SOAH recommended be specifically</p> <p>8 required by additional permit conditions in its</p> <p>9 April 25, 2008 PFD?"</p> <p>10 The reference there to the September 2009</p> <p>11 fall-off test is -- I would assume you understand that</p> <p>12 to be the fall-off test that you conducted in</p> <p>13 September 2009?</p> <p>14 A Yes, it is.</p> <p>15 Q Okay. You go on to say, "Yes. Proposed</p> <p>16 Conclusion of Law No. 51 stated that the UIC permits</p> <p>17 should be granted with additional conditions specifying</p> <p>18 that the proposed WDW410 be reperforated between 6,045</p> <p>19 and 6,390 feet, that a fall-off test be conducted, and</p> <p>20 that the results of the fall-off test be used to</p> <p>21 recalculate the cone of influence. This has all been</p> <p>22 done now, and so to the extent those additional special</p> <p>23 conditions recommended by SOAH were ever necessary, they</p> <p>24 are no longer so."</p> <p>25 Do you believe, Mr. Casey, that you've</p>	200	<p>1 designed to test the transmissive nature of that fault.</p> <p>2 Could it not have been?</p> <p>3 A It potentially could have reached the fault.</p> <p>4 I'm not sure it would have.</p> <p>5 Q Okay. Well, a moment ago, you described a</p> <p>6 mathematical process that you went through to determine</p> <p>7 the length of time that it would take.</p> <p>8 And so I guess my question to you is:</p> <p>9 Knowing now what you know about the permeability of the</p> <p>10 lower Cockfield Formation in September 2009, if it</p> <p>11 changes from day to day, how long of a fall-off test</p> <p>12 would be -- would we need to test the transmissive</p> <p>13 nature of the lower Cockfield at that EW-4400-S Fault?</p> <p>14 A It would be considerably longer.</p> <p>15 Q Considerably longer than 75.5 hours?</p> <p>16 A Correct.</p> <p>17 Q Okay. If I could direct your attention now,</p> <p>18 Mr. Casey, to TexCom Exhibit No. 90.</p> <p>19 A (Witness complying.) Okay.</p> <p>20 Q Could you explain to the ALJs what Exhibit</p> <p>21 No. 90 represents?</p> <p>22 A It's the Class V authorization to conduct our</p> <p>23 testing.</p> <p>24 Q Okay. Without this authorization, do I</p> <p>25 understand you correct, then, that you would not have</p>
199	<p>1 developed a fall-off test of sufficient radius of</p> <p>2 investigation to have complied with at least the</p> <p>3 proposed intent of the administrative law judges'</p> <p>4 special condition in No. 51 regarding the radius of</p> <p>5 investigation?</p> <p>6 A Well, we complied that we ran a test with the</p> <p>7 intent of seeing the fault at 4400 feet.</p> <p>8 Q And --</p> <p>9 A And the results of the test, we did not reach</p> <p>10 that radius of investigation.</p> <p>11 Q Okay. And so, in fact, your statement there at</p> <p>12 Lines 7 through 9, that the condition is no longer</p> <p>13 necessary, is not entirely true, is it? To this day,</p> <p>14 doesn't there remain a question about the transmissive</p> <p>15 nature of that fault?</p> <p>16 A Well, in my mind it doesn't.</p> <p>17 Q I understand. But certainly, within the</p> <p>18 context of this hearing, you appreciate the fact that</p> <p>19 there is a question about the transmissive nature of</p> <p>20 that fault, at least within the lower Cockfield</p> <p>21 Formation there?</p> <p>22 A Right. We did not reach the fault with our</p> <p>23 fall-off test.</p> <p>24 Q Okay. But you agree that a fall-off test that</p> <p>25 would have been -- could have been appropriately</p>	201	<p>1 been able to conduct the fall-off test?</p> <p>2 A That's correct.</p> <p>3 Q Okay. So, in fact, the scope of your</p> <p>4 authorization exists here in this document, TexCom</p> <p>5 Exhibit No. 90, does it not?</p> <p>6 A The authorization, yes.</p> <p>7 Q Okay. I'm going to read from the second</p> <p>8 paragraph, Mr. Casey, there on Page 1, and I want you to</p> <p>9 make sure and let me know if I get any of this</p> <p>10 incorrect. I'm going to start at the second sentence</p> <p>11 just to expedite things here.</p> <p>12 "In order to maintain authorization by</p> <p>13 rule for the proposed reperforation and testing, the</p> <p>14 project must meet all requirements and the UIC rules</p> <p>15 provided by Title 30 Texas Administrative Code Chapter</p> <p>16 331, the plans and specifications in the application and</p> <p>17 its amendments, and the following terms and conditions."</p> <p>18 Did I get that right, Mr. Casey?</p> <p>19 A Yes, you did.</p> <p>20 Q And so if I could get you, then, to turn</p> <p>21 specifically to Term and Condition No. 14, which should</p> <p>22 appear on Page 3 of the exhibit there.</p> <p>23 A Yes.</p> <p>24 Q Would you mind reading Term No. 14 for me?</p> <p>25 A "Specific Gravity of Injected Fluid. Except</p>

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202	<p>1 when authorized by the Executive Director, the specific</p> <p>2 gravity of injected fluids shall be greater than .9 and</p> <p>3 less than 1.05 as measured at 68 degrees Fahrenheit."</p> <p>4 Q Okay. And with that in mind, if I could get</p> <p>5 you to turn, then, to TexCom Exhibit No. 91.</p> <p>6 A (Witness complying.) Okay.</p> <p>7 Q Specifically to Page 23 of 27.</p> <p>8 In Figure 2 -- well, would you mind</p> <p>9 explaining what all of these different figures represent</p> <p>10 here in Figure 2?</p> <p>11 A These are the reservoir and test properties</p> <p>12 used in the analysis.</p> <p>13 Q This is a reflection of the actual protocol, if</p> <p>14 you will, that you followed in conducting your fall-off</p> <p>15 test in 2009?</p> <p>16 A Well, these are the values generated that we</p> <p>17 used to do the analysis of the fall-off test.</p> <p>18 Q Okay. Fair enough.</p> <p>19 I'm looking at Figure 2, the reference to</p> <p>20 specific gravity of injectate. Could you read that</p> <p>21 value, a specific gravity value for me?</p> <p>22 A It is 1.18.</p> <p>23 Q Okay. That is greater than 1.05, is it not?</p> <p>24 A Yes, it is.</p> <p>25 Q All right. Did you get authorization from the</p>	204	<p>1 MR. RILEY: Objection. He was answering</p> <p>2 the question.</p> <p>3 JUDGE EGAN: Sustained.</p> <p>4 Q (BY MR. HILL) Go ahead.</p> <p>5 A The authorization to inject that was issued by</p> <p>6 the TCEQ, the Class V authorization, they pulled, you</p> <p>7 know, all those various, you know, conditions straight</p> <p>8 out of the application. You know, in my years of</p> <p>9 testing wells within the state of Texas and other states</p> <p>10 in the union, testing, you know -- your testing fluids</p> <p>11 don't typically comply with your -- with the</p> <p>12 characteristics of the normal waste stream because it is</p> <p>13 a test.</p> <p>14 As long as you don't exceed your -- you</p> <p>15 know, you're not putting waste in the ground during the</p> <p>16 test, it is a brine material. It's not a wastewater,</p> <p>17 which we didn't inject waste. And then we typically</p> <p>18 use, you know, field available brine or brine available</p> <p>19 for doing our injection testing. And as long as you</p> <p>20 don't exceed fracture gradient, exceed your pressure</p> <p>21 limitations, you stay within the bounds of the pressure</p> <p>22 limitations of the well, it's been accepted by the State</p> <p>23 of Texas and the TCEQ for well testing for, you know, as</p> <p>24 long as I've been doing well testing.</p> <p>25 Q Okay. So your testimony is, is that you</p>
203	<p>1 TCEQ Executive Director to exceed the specific gravity</p> <p>2 specified in your Class V authorization before you used</p> <p>3 an injectate with a higher specific gravity that was</p> <p>4 otherwise authorized?</p> <p>5 A No, we didn't.</p> <p>6 Q Okay. So you didn't have any authority from</p> <p>7 the Executive Director to exceed that permit term?</p> <p>8 A No.</p> <p>9 Q All right. You certainly got -- you certainly</p> <p>10 have to appreciate the question, Mr. Casey -- there will</p> <p>11 be many folks in Montgomery County that want to know if</p> <p>12 this is the attention to detail that they can expect</p> <p>13 from TexCom and its agents in the operation of the</p> <p>14 proposed injection well.</p> <p>15 MR. RILEY: Objection, form.</p> <p>16 JUDGE EGAN: Is there a question in there?</p> <p>17 Go ahead.</p> <p>18 MR. HILL: Yeah, the question is, Your</p> <p>19 Honor, is this the attention to detail that we can</p> <p>20 expect from TexCom in the operation of its proposed</p> <p>21 injection well?</p> <p>22 A No. I think the --</p> <p>23 Q (BY MR. HILL) So the folks --</p> <p>24 A -- authorization --</p> <p>25 Q -- at Montgomery County --</p>	205	<p>1 believe it's okay to have violated that term of your</p> <p>2 Class V authorization because it's standard industry</p> <p>3 practice?</p> <p>4 A No. I mean, I missed the specific gravity.</p> <p>5 You know, I've been designing a test, you know, around</p> <p>6 the state for years, and we got authorization to do the</p> <p>7 test. I stayed within the bounds of what our test was</p> <p>8 trying to accomplish, which was to do our fall-off test,</p> <p>9 and I missed the 1.05 specific gravity. I made sure we</p> <p>10 didn't exceed the fracture pressure. We didn't exceed</p> <p>11 injection rates. You know, we stayed within our bounds</p> <p>12 of what the test was designed for.</p> <p>13 Q Certainly, you appreciated the fact that there</p> <p>14 would be many eyes that would be peer reviewing your</p> <p>15 work in this fall-off test.</p> <p>16 A Right. I -- you know, I missed it.</p> <p>17 Q Okay. And certainly you appreciate the fact</p> <p>18 that there will be those folks concerned about what</p> <p>19 might get missed in the future, and that this may not be</p> <p>20 a good indication of what folks might can expect from</p> <p>21 TexCom in the future?</p> <p>22 A I can't tell you what folks would expect in the</p> <p>23 future.</p> <p>24 Q Wouldn't you agree that folks should expect for</p> <p>25 permit holders to comply with the express terms of their</p>

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206	<p>1 permits?</p> <p>2 A That's what the permits are there for, yes,</p> <p>3 sir.</p> <p>4 Q Okay. And, yet, you couldn't do that in this</p> <p>5 test where you knew there would be many eyes focusing on</p> <p>6 your work?</p> <p>7 A I missed the specific gravity, yes, sir.</p> <p>8 Q All right. Thank you, Mr. Casey.</p> <p>9 MR. HILL: I have no further questions.</p> <p>10 JUDGE EGAN: All right. Ms. Mendoza?</p> <p>11 MS. MENDOZA: If I may.</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MS. MENDOZA:</p> <p>14 Q Mr. Casey, my name is Mary Mendoza. I</p> <p>15 represent Denbury. I don't believe we've gotten to meet</p> <p>16 before. Good afternoon.</p> <p>17 A Good afternoon.</p> <p>18 Q I wanted to make sure that we're talking about</p> <p>19 the same things when we're talking about the lower</p> <p>20 Cockfield.</p> <p>21 Tell me what -- on the WDW315 or WDW410</p> <p>22 well, at what depths do you find the lower Cockfield?</p> <p>23 A I believe the top of the lower Cockfield is</p> <p>24 6045. I'm not sure where I have it in this stack of</p> <p>25 documents here.</p>	208	<p>1 Q (BY MS. MENDOZA) -- this is TexCom Exhibit 23</p> <p>2 from the first hearing, and I want to direct you to Page</p> <p>3 26. I will have to say I'm sorry this has some of my</p> <p>4 scribbles on it, but I want to make sure that we are</p> <p>5 talking about the correct interval.</p> <p>6 A Yeah 6045, I believe, is the top of the lower</p> <p>7 Cockfield.</p> <p>8 Q And the bottom of the lower Cockfield would be?</p> <p>9 A According to this, 6390.</p> <p>10 Q Do you recognize that document?</p> <p>11 A It's part of the application. I'm just not</p> <p>12 sure it's the final revision without --</p> <p>13 Q I will hand you the first few pages. Is that</p> <p>14 the final revision of the application?</p> <p>15 A I believe so.</p> <p>16 Q Thank you. If I can go on and pull that back.</p> <p>17 A Oh, sure.</p> <p>18 Q Thank you.</p> <p>19 Prior to submitting this final revision to</p> <p>20 the application, I believe y'all submitted several other</p> <p>21 revisions. Is that correct?</p> <p>22 A Yes, ma'am.</p> <p>23 MS. MENDOZA: Your Honor, may I hand the</p> <p>24 witness another exhibit?</p> <p>25 JUDGE EGAN: Yes.</p>
207	<p>1 MR. RILEY: Would this be time to find the</p> <p>2 document, so he can answer accurately?</p> <p>3 MS. MENDOZA: Yes, let's take the time to</p> <p>4 find the document so we can answer accurately.</p> <p>5 MR. RILEY: Excellent.</p> <p>6 MS. MENDOZA: Let me see if I can find</p> <p>7 something for you.</p> <p>8 MR. RILEY: Could we take a brief recess</p> <p>9 so I can step out for a second? I'll be right back.</p> <p>10 JUDGE EGAN: You need to step out? I hate</p> <p>11 to stop in the middle of a witness's question.</p> <p>12 MR. RILEY: I agree, and I'm sorry if</p> <p>13 that's -- that's fine. I'm fine. I didn't realize we</p> <p>14 were that close to finding the document.</p> <p>15 JUDGE EGAN: If you need to step out while</p> <p>16 he's looking at something, we can wait until you step</p> <p>17 back in.</p> <p>18 MR. RILEY: Okay. Thank you. I don't</p> <p>19 know if we found the document yet, so I'll just wait.</p> <p>20 MS. MENDOZA: I can show him something in</p> <p>21 just a moment.</p> <p>22 Q (BY MS. MENDOZA) Mr. Casey --</p> <p>23 MS. MENDOZA: If I may hand him a</p> <p>24 document?</p> <p>25 JUDGE EGAN: Yes.</p>	209	<p>1 Q (BY MS. MENDOZA) This is Exhibit 20 from the</p> <p>2 first hearing. It's labeled as "Response to Notice of</p> <p>3 Deficiencies No. 2." Do you recognize that?</p> <p>4 A Yes.</p> <p>5 Q Could you look at Page 80 of that document,</p> <p>6 please?</p> <p>7 A Okay.</p> <p>8 Q What does that show the top of the lower</p> <p>9 Cockfield as?</p> <p>10 A 6291.</p> <p>11 Q Did you direct someone to make the change</p> <p>12 between this revision that is Exhibit 20 and the change</p> <p>13 that is Exhibit 23?</p> <p>14 A Our geologist, Dr. Langhus, made the edit.</p> <p>15 Q Do you rely upon Dr. Langhus for all matters of</p> <p>16 geology in this hearing?</p> <p>17 A Yes, ma'am. He is the geologic expert.</p> <p>18 Q Are you a geologic expert?</p> <p>19 A I'm a petroleum engineer.</p> <p>20 Q So you have no opinion about why Dr. Langhus</p> <p>21 made this change?</p> <p>22 A I couldn't speculate on exactly. You know,</p> <p>23 that was a few years ago, and we went through a number</p> <p>24 of iterations before we got the -- as we went through</p> <p>25 and reviewed the various logs and got the tops picked</p>

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210	<p>1 exactly where they're supposed to be.</p> <p>2 Q When you say you reviewed the various logs, did</p> <p>3 you have multiple logs for Well WDW410?</p> <p>4 A For Well 315, no, ma'am, but we had offset well</p> <p>5 logs that Dr. Langhus used in his analysis.</p> <p>6 Q So you had one well log for WDW410. Is that</p> <p>7 correct?</p> <p>8 A Yes.</p> <p>9 Q Did you have cores for WDW410?</p> <p>10 A I had a core report, yes, ma'am.</p> <p>11 Q You did not see the cores themselves?</p> <p>12 A No, ma'am.</p> <p>13 Q You were not able to verify for yourselves the</p> <p>14 information in the core report. Is that correct?</p> <p>15 A I had a core report, ma'am.</p> <p>16 Q Were you able to verify for yourself by looking</p> <p>17 at the geologic cores the information in the core</p> <p>18 report?</p> <p>19 A No, ma'am.</p> <p>20 Q If somebody said that TexCom was fortunate to</p> <p>21 have complete geologic cores that were cut while</p> <p>22 drilling the WDW315 well which were able to confirm the</p> <p>23 accuracy of the reference materials, they would be</p> <p>24 wrong?</p> <p>25 A No. The whole cores were available when the</p>	212	<p>1 higher than 190.6 millidarcies. Correct?</p> <p>2 A Yes, ma'am.</p> <p>3 Q You have previously testified that you expect</p> <p>4 the actual permeability to be higher than 400</p> <p>5 millidarcies?</p> <p>6 A Yes, ma'am.</p> <p>7 Q Is that --</p> <p>8 A Yes, ma'am.</p> <p>9 Q You modeled in the first hearing using 500</p> <p>10 millidarcies?</p> <p>11 A That's correct.</p> <p>12 Q Do you also believe that portions of the lower</p> <p>13 Cockfield have 600, 800, or 900 millidarcy permeability?</p> <p>14 A That, I couldn't tell you, ma'am.</p> <p>15 Q Do you remember when you testified in the prior</p> <p>16 hearing, there was some discussion about that? Do you</p> <p>17 remember your testimony in the prior hearing?</p> <p>18 A Not specifically.</p> <p>19 Q Not specifically. Do you remember stating</p> <p>20 that, "And so when we go back and look at the core</p> <p>21 samples and evaluate, 'Okay. We're going to reperform</p> <p>22 across clean sands and you open up the zone of -- the</p> <p>23 portions of the lower Cockfield that are 600, 800, 900</p> <p>24 millidarcy permeability, that you're going to average</p> <p>25 closer to a 500 millidarcy perm over the whole</p>
211	<p>1 well was first drilled, and we pulled information from</p> <p>2 the drilling report that was -- and the cores that were</p> <p>3 done during original drilling of the well, which we were</p> <p>4 not responsible for.</p> <p>5 Q Let me ask my question again, then.</p> <p>6 Was TexCom so fortunate as to have in its</p> <p>7 possession the complete geologic cores that were cut</p> <p>8 while drilling the WDW315 well?</p> <p>9 A I did not have possession of the cores.</p> <p>10 Q Do you know if Dr. Langhus has the possession</p> <p>11 of those cores?</p> <p>12 A As far as I know, he doesn't have the cores.</p> <p>13 Q Have you ever seen the cores?</p> <p>14 A No, ma'am.</p> <p>15 Q Why don't -- I want to make sure, though, that</p> <p>16 as we go forward, we are all talking about the same</p> <p>17 intervals.</p> <p>18 So let's assume that the lower Cockfield</p> <p>19 is, for the WDW315 or WDW410 well, from 6,045 feet to</p> <p>20 6,390 feet. Is that okay?</p> <p>21 A Yes, ma'am.</p> <p>22 Q I want to make sure that I understand the</p> <p>23 permeabilities that we're talking about here today.</p> <p>24 You have testified that you believe that</p> <p>25 the permeability of the injection interval is actually</p>	213	<p>1 145 feet." Do you remember that testimony?</p> <p>2 A Yes, ma'am.</p> <p>3 Q Do you still believe that testimony to be</p> <p>4 accurate?</p> <p>5 A Yes, I do.</p> <p>6 JUDGE EGAN: Can you direct us to the</p> <p>7 page?</p> <p>8 MS. MENDOZA: Yes. That is on Page 201</p> <p>9 starting at Line 15 of the prior transcript.</p> <p>10 JUDGE EGAN: Thank you.</p> <p>11 Q (BY MS. MENDOZA) Did you, at the time of the</p> <p>12 prior hearing, have the -- I'm sorry.</p> <p>13 Did you, at the time of the prior hearing,</p> <p>14 believe that the permeability would also be closer to 7-</p> <p>15 or 800 millidarcies?</p> <p>16 A I believe we modeled it 500.</p> <p>17 Q That was not my question, Mr. Casey.</p> <p>18 Did you, at the time of the prior hearing,</p> <p>19 believe that the permeability would be closer to 7- or</p> <p>20 800 millidarcies?</p> <p>21 A I believed it would be higher based on the core</p> <p>22 analysis report that we had.</p> <p>23 Q Do you remember at the time of the prior -- at</p> <p>24 the time of your prior testimony, you said, "You know,</p> <p>25 we use a conservative value of permeability, when, in</p>

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214	<p>1 reality, it should be closer to 7- or 800 millidarcies"?</p> <p>2 MR. RILEY: Objection, form. It's -- if</p> <p>3 she's quoting from transcript, we should at least be</p> <p>4 given a reference so we can see if it's in context.</p> <p>5 JUDGE EGAN: Go ahead and give us a</p> <p>6 reference, please.</p> <p>7 Q (BY MS. MENDOZA) On -- I want to direct you to</p> <p>8 Page 241 of the transcript in the prior -- in the prior</p> <p>9 hearing.</p> <p>10 MS. MENDOZA: May I approach the witness</p> <p>11 and provide him with the testimony?</p> <p>12 JUDGE EGAN: Yes.</p> <p>13 Q (BY MS. MENDOZA) Mr. Casey, I want to direct</p> <p>14 you to Page 241 of your prior testimony, on Line 14.</p> <p>15 A Okay.</p> <p>16 Q Did you, at that point, say that you expected</p> <p>17 the permeability to be -- it would be closer to 7- or</p> <p>18 800 millidarcies?</p> <p>19 A That's correct.</p> <p>20 Q Do you still believe that to be correct?</p> <p>21 A I believe that 500 is a good representation of</p> <p>22 the formation. You know, some sections may have higher;</p> <p>23 some sections may have lower.</p> <p>24 Q So is your prior testimony correct or</p> <p>25 incorrect?</p>	216	<p>1 Q Perhaps I need to ask it again.</p> <p>2 Do you have a fall-off test that shows</p> <p>3 that it is higher -- the permeability of the lower</p> <p>4 Cockfield is higher than 500 millidarcies?</p> <p>5 A No, I do not.</p> <p>6 Q You understand in this hearing, perhaps, that</p> <p>7 various people have calculated different numbers than</p> <p>8 you calculated based upon your 2009 fall-off test. Do</p> <p>9 you understand that?</p> <p>10 A Yes, ma'am.</p> <p>11 Q You understand that Mr. Grant calculated a</p> <p>12 different number?</p> <p>13 A Yes, ma'am.</p> <p>14 Q Do you understand that Mr. Sutherland</p> <p>15 calculated a different number?</p> <p>16 A Yes, ma'am.</p> <p>17 Q Do you understand that the EPA calculated a</p> <p>18 different number?</p> <p>19 A Yes, ma'am.</p> <p>20 Q Are all of those people wrong?</p> <p>21 A No. They, you know --</p> <p>22 Q Thank you. You've answered my question.</p> <p>23 What permeability did you assume when you</p> <p>24 designed your 2009 fall-off test to reach the 5400 -- to</p> <p>25 reach out to 5400 feet?</p>
215	<p>1 A Correct.</p> <p>2 Q So today we've heard from you that the</p> <p>3 permeability is higher than 190.6; it is higher than</p> <p>4 400; it is 600, 800, or 900 millidarcies; it is 700 or</p> <p>5 800 millidarcies.</p> <p>6 A I have core report that states it's, you know,</p> <p>7 above 700. We have a test that shows 190. You know, we</p> <p>8 have tests that show 80.9. You know, I believe that the</p> <p>9 number is upwards of 190, closer probably to 500. But,</p> <p>10 you know, with the data I have in hand right now, I</p> <p>11 have -- you know, I have a test that shows 190 and I</p> <p>12 have a test that shows 80.9 and I have core samples that</p> <p>13 show 8- to 900. So you infer between those that, you</p> <p>14 know, 500 is a good representation.</p> <p>15 Q You have a test that shows 190.6. Yes?</p> <p>16 A Correct.</p> <p>17 Q You have a test that shows 80.9?</p> <p>18 A That's correct.</p> <p>19 Q Do you have any tests that shows it's 500</p> <p>20 millidarcies?</p> <p>21 A No.</p> <p>22 Q Do you have any tests that shows it's higher</p> <p>23 than 500 millidarcies?</p> <p>24 A I have core reports that state it has higher</p> <p>25 stated permeabilities.</p>	217	<p>1 A We based it off 500.</p> <p>2 Q Do you know how to calculate that for me here</p> <p>3 today?</p> <p>4 A Not sitting here, no, ma'am.</p> <p>5 Q If I provided you with a reference, do you</p> <p>6 think perhaps you could calculate that?</p> <p>7 A Not just sitting here, no, ma'am.</p> <p>8 Q Can I direct you to Page 25 of TexCom</p> <p>9 Exhibit 91?</p> <p>10 And if I can take back the transcript</p> <p>11 there, I'll get that out of your way.</p> <p>12 A Is that Exhibit 91?</p> <p>13 Q Exhibit 91. It's one of the exhibits that's</p> <p>14 attached to the testimony that you admitted today.</p> <p>15 JUDGE WALSTON: What page did you say?</p> <p>16 MS. MENDOZA: Page 25.</p> <p>17 Q (BY MS. MENDOZA) I'm having a hard time</p> <p>18 reading that equation. Could you tell me what it says?</p> <p>19 A Which page?</p> <p>20 Q Page 25.</p> <p>21 A Oh, I'm sorry. I thought you said 21.</p> <p>22 Q Could you tell me what that equation says?</p> <p>23 A Not sitting here, no, ma'am.</p> <p>24 MR. RILEY: We may have to substitute a</p> <p>25 clearer page for everyone's benefit.</p>

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218	<p>1 MS. MENDOZA: Do you perhaps have that</p> <p>2 clear page now so that we can go on and finish this</p> <p>3 question out?</p> <p>4 MR. RILEY: No, ma'am, I don't. If you'll</p> <p>5 give me some notice you wanted to ask questions about</p> <p>6 it, I certainly would have provided it. But, no, I</p> <p>7 don't have it in my pocket.</p> <p>8 Q (BY MS. MENDOZA) Do you know what the equation</p> <p>9 is to determine the radius of investigation used in a</p> <p>10 fall-off test?</p> <p>11 A Yes, ma'am, I know of the equation.</p> <p>12 Q Can you tell me what that equation is, please?</p> <p>13 A No, I cannot, sitting here, tell you the</p> <p>14 equation.</p> <p>15 Q What reference material would you need to find</p> <p>16 that?</p> <p>17 A I have a staff that runs these equations for me</p> <p>18 now, so I don't run these equations myself, but I verify</p> <p>19 the numbers.</p> <p>20 Q Is there somebody that you could call that</p> <p>21 would tell you what that equation is?</p> <p>22 A I could possibly call my partner.</p> <p>23 MS. MENDOZA: Your Honors, do you mind if</p> <p>24 we would take a short break and allow him to try to find</p> <p>25 the equation so that he can show us how he did his work?</p>	220	<p>1 JUDGE EGAN: You can't read the equation.</p> <p>2 MR. RILEY: Same here. If this helps, I'm</p> <p>3 wide open. If it refreshes his recollection as to all</p> <p>4 the variables in that equation --</p> <p>5 JUDGE EGAN: Take a look at it, Mr. Casey,</p> <p>6 if it helps.</p> <p>7 WITNESS CASEY: Okay. I'll be back. I</p> <p>8 mean, I'd rather call my partner since me and him worked</p> <p>9 together on it --</p> <p>10 JUDGE EGAN: All right. Then if he</p> <p>11 prefers --</p> <p>12 WITNESS CASEY: -- than try and guess at</p> <p>13 which equation we used.</p> <p>14 JUDGE EGAN: Then we'll go ahead, and you</p> <p>15 can step out right now and come back as soon as you</p> <p>16 reach your partner and tell us. You might take a piece</p> <p>17 of paper with you to write the equation down.</p> <p>18 (Laughter)</p> <p>19 JUDGE EGAN: So we'll be off the record</p> <p>20 for just a second, but everybody just stay where you</p> <p>21 are.</p> <p>22 (Recess: 4:18 p.m. to 4:30 p.m.)</p> <p>23 JUDGE EGAN: Mr. Casey has returned.</p> <p>24 We're back on the record. You may proceed.</p> <p>25 MS. MENDOZA: Thank you.</p>
219	<p>1 JUDGE EGAN: If it's agreeable to</p> <p>2 everybody, we'll allow him to step out and try to make a</p> <p>3 phone call while everybody just stays seated so we</p> <p>4 don't -- and if you could reach your partner, let us</p> <p>5 know. And if you can get the equation, that would be</p> <p>6 great, too.</p> <p>7 MS. MENDOZA: And, Your Honor, if I might</p> <p>8 show the witness something just right before he steps</p> <p>9 out, perhaps this would -- I don't know if this would</p> <p>10 help him.</p> <p>11 Q (BY MS. MENDOZA) I don't know if you recognize</p> <p>12 this book, "Advances in Well Test Analysis."</p> <p>13 A I used it in college, yes, ma'am.</p> <p>14 Q If I were to show you this and show you an</p> <p>15 equation, might it refresh your recollection of what the</p> <p>16 correct equation is?</p> <p>17 MR. RILEY: Do we want to call the partner</p> <p>18 or not? I mean, is it --</p> <p>19 MS. MENDOZA: Well, I was just going to</p> <p>20 try to short-circuit it, but if he doesn't want to look</p> <p>21 at the book and see if he recognizes an equation, we can</p> <p>22 wait for him to call.</p> <p>23 JUDGE EGAN: The problem is our copy of</p> <p>24 the exhibit doesn't have --</p> <p>25 MR. RILEY: Same here.</p>	221	<p>1 Q (BY MS. MENDOZA) Mr. Casey, did you have the</p> <p>2 opportunity to find the equation that you used to</p> <p>3 calculate the radius of investigation?</p> <p>4 A Yes, ma'am, I did.</p> <p>5 Q And can you tell us what that equation is?</p> <p>6 A All right. It's rd is equal to .029 and then</p> <p>7 square root -- everything I tell you is under the square</p> <p>8 root.</p> <p>9 Q Okay.</p> <p>10 A We have permeability times time and hours</p> <p>11 divided by porosity times viscosity times total</p> <p>12 compressibility.</p> <p>13 Q And now if I asked you to take that equation</p> <p>14 and put for rd, which is the radius of investigation,</p> <p>15 make that 5400 feet and then use all the rest of the</p> <p>16 assumptions, except for permeability, that you used in</p> <p>17 your September 2009 fall-off test and solve for the</p> <p>18 permeability. Can you do that?</p> <p>19 A And solve for permeability?</p> <p>20 Q Solve for the permeability that you would have</p> <p>21 had to have been using if you intended rd, the radius of</p> <p>22 investigation, to be 5400 feet. Can you do that?</p> <p>23 A Sure. Let me get a calculator.</p> <p>24 Q I have one if -- are you familiar with --</p> <p>25 A Yeah.</p>

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222	<p>1 Q -- this kind?</p> <p>2 A That will work.</p> <p>3 MS. MENDOZA: Your Honor, may I approach?</p> <p>4 JUDGE EGAN: Yes, you may.</p> <p>5 A Restate what you want me to do. Let me make</p> <p>6 sure we're on the same page.</p> <p>7 Q (BY MS. MENDOZA) I would like you, for all of</p> <p>8 the variables in that equation, to use all of the</p> <p>9 variables that you used in your 2009 fall-off test,</p> <p>10 except for permeability. And I want you to make rd</p> <p>11 5400 feet.</p> <p>12 So in other words, you are going to</p> <p>13 calculate using the same variables that you used in your</p> <p>14 fall-off test for the time -- test time and hours, for</p> <p>15 the porosity, for the viscosity, and for total</p> <p>16 compressibility. Use the same things that you used in</p> <p>17 your 2009 fall-off test. That leaves you with two</p> <p>18 variables, the radius of investigation and permeability.</p> <p>19 Then for radius of investigation, I want you to use</p> <p>20 5400 feet, and I want you to solve for the last variable</p> <p>21 which is permeability.</p> <p>22 A Okay. (Witness complying.) Okay.</p> <p>23 Q Can you tell me what permeability you found?</p> <p>24 A 833.2.</p> <p>25 Q And that's in millidarcies?</p>	224	<p>1 and it did voluntarily.</p> <p>2 JUDGE EGAN: You want to rephrase your</p> <p>3 question to make it clear that they were not under</p> <p>4 orders to do that.</p> <p>5 Q (BY MS. MENDOZA) Mr. Casey, I'm certainly not</p> <p>6 implying that you were in any way ordered to run a</p> <p>7 fall-off test out to 5400 feet. Do you understand that?</p> <p>8 A Yes, ma'am.</p> <p>9 Q And your intent was for this fall-off test to</p> <p>10 reach 5400 feet. Is that correct?</p> <p>11 A That was the intent -- well, let me take that</p> <p>12 back.</p> <p>13 The intent was to try and see the fault at</p> <p>14 4400 feet.</p> <p>15 Q Is your testimony that it was not your intent</p> <p>16 to run a fall-off test that would result in an area -- a</p> <p>17 radius of investigation of 5400 feet?</p> <p>18 A The intent was to run the test to see out</p> <p>19 5400 feet.</p> <p>20 Q You failed to accomplish that. Correct?</p> <p>21 A That is correct.</p> <p>22 Q You had many scenarios that you calculated as</p> <p>23 potentially accomplishing that. Correct?</p> <p>24 A That is correct.</p> <p>25 Q In fact, one of those scenarios indicated, I</p>
223	<p>1 A Yes, ma'am.</p> <p>2 Q Earlier you had testified that you had assumed</p> <p>3 500 millidarcies to design your test to reach 5400 feet.</p> <p>4 Was that testimony incorrect?</p> <p>5 A No. No. When we calculated the time to -- you</p> <p>6 know, the amount of injection time and fall-off time, we</p> <p>7 used a viscosity of .8 in the calculation which will run</p> <p>8 you out to about 78 and 79 hours.</p> <p>9 Q So you turned your test off before it would</p> <p>10 have reached 5400 feet even under your prior</p> <p>11 assumptions?</p> <p>12 A That -- we ran it a couple different ways, and</p> <p>13 we came up with between 72 and 79 hours. And we ran it</p> <p>14 as long as we could before we had -- we had some well</p> <p>15 issues that caused us to shut down earlier than planned.</p> <p>16 Q So you were unable to achieve your plan even</p> <p>17 though you understood the importance of running this out</p> <p>18 to 5400 feet?</p> <p>19 MR. RILEY: Objection.</p> <p>20 JUDGE EGAN: And the objection is?</p> <p>21 MR. RILEY: The objection is the</p> <p>22 importance of -- this is a voluntary measure taken --</p> <p>23 undertaken by TexCom. I'm not sure I understand</p> <p>24 counsel's context for understanding the importance of</p> <p>25 going to 5400 feet. Something TexCom didn't have to do</p>	225	<p>1 believe you testified, that you should run your test for</p> <p>2 about 79 hours. Is that correct?</p> <p>3 A 75 to 79 hours.</p> <p>4 Q And you did not run your test for 79 hours. Is</p> <p>5 that correct?</p> <p>6 A That's correct.</p> <p>7 Q If you can look still on Page 25 of Exhibit 91,</p> <p>8 you calculated your radius of investigation using 75.5</p> <p>9 hours. Correct?</p> <p>10 A That's correct.</p> <p>11 Q Your top plot in Figure 5 plots how many hours</p> <p>12 of data?</p> <p>13 A Well, that's an equivalent time. I, you know,</p> <p>14 honestly couldn't tell you. That is the -- all the data</p> <p>15 collected is plotted.</p> <p>16 Q And your bottom plot plots how many hours of</p> <p>17 data?</p> <p>18 A It plots all the data we have.</p> <p>19 Q Why does the bottom curve end before the top</p> <p>20 curve?</p> <p>21 A It's a function of the computer program. I</p> <p>22 couldn't tell you, ma'am.</p> <p>23 Q Do you know whether your computer program cut</p> <p>24 off data from the bottom plot?</p> <p>25 A As far as I know, it plotted everything it had</p>

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<p style="text-align: right;">226</p> <p>1 in the system.</p> <p>2 Q So if we had more data from your system that</p> <p>3 were not shown on this, you were unaware of that?</p> <p>4 A It's plotted -- you know, the computer plots</p> <p>5 out the data that it has.</p> <p>6 Q You have no control over the scale of this</p> <p>7 graph?</p> <p>8 A Well, we have control of the scale, and the</p> <p>9 scale is fitting for the plot that was made.</p> <p>10 Q And your y-axis, what is the bottom number on</p> <p>11 your y-axis?</p> <p>12 A On the y-axis?</p> <p>13 Q I think it's the DP and DP prime axis. What is</p> <p>14 the bottom of that axis?</p> <p>15 A I don't remember off the top of my head, ma'am.</p> <p>16 I'd have to look at the data from our computer program.</p> <p>17 Q Did you produce that data in this case?</p> <p>18 A I assume it was produced. I'm not sure. My --</p> <p>19 you know, we submitted all the analysis which is this</p> <p>20 report.</p> <p>21 Q And you provided all that computer data to</p> <p>22 Mr. Riley or to TexCom's -- one of TexCom's counsel. Is</p> <p>23 that correct?</p> <p>24 A Not for the fall-off. We just prepared the</p> <p>25 report of the fall-off test.</p>	<p style="text-align: right;">228</p> <p>1 and we're entitled to it under our disclosures.</p> <p>2 JUDGE EGAN: I just understood him to say</p> <p>3 that there was none provided to TexCom. Did I</p> <p>4 misunderstand you?</p> <p>5 WITNESS CASEY: No, there was no -- we</p> <p>6 didn't provide the computer-generated analysis. We</p> <p>7 provide the report of the analysis that we conduct.</p> <p>8 Q (BY MS. MENDOZA) Maybe I'm not clear on my</p> <p>9 question.</p> <p>10 You must have collected numerical data in</p> <p>11 order to be able to put something into your computer.</p> <p>12 Is that correct?</p> <p>13 A We have the pressures from the fall-off test,</p> <p>14 yes, ma'am.</p> <p>15 Q And did you provide those to TexCom or its</p> <p>16 counsel?</p> <p>17 A I'm not sure if that was part of the report or</p> <p>18 not.</p> <p>19 Q Did you provide any of the data that backs up</p> <p>20 this report to TexCom's counsel or to TexCom?</p> <p>21 A They received everything that is in the report.</p> <p>22 They received a copy of the report just like</p> <p>23 everybody -- you know, I provided it --</p> <p>24 JUDGE EGAN: So what is in evidence?</p> <p>25 A -- to TexCom.</p>
<p style="text-align: right;">227</p> <p>1 Q So you didn't provide the data to that to</p> <p>2 anyone?</p> <p>3 A We provided the data -- the fall-off data, yes,</p> <p>4 ma'am.</p> <p>5 Q You provided the fall-off data --</p> <p>6 A Correct.</p> <p>7 Q -- to his -- to TexCom's counsel?</p> <p>8 A It was part of the -- the pressures are part of</p> <p>9 what we submitted in the -- we submitted to them, yes.</p> <p>10 Q I just want to make sure because I want to go</p> <p>11 back and look for more of this data. So I should be</p> <p>12 looking for a computer file that has this data in it?</p> <p>13 Is that what I should look for?</p> <p>14 A This -- as far as what's computer generated,</p> <p>15 no, there's no data submitted. We just submitted the</p> <p>16 fall-off results.</p> <p>17 Q So the data that backs up this plot that you</p> <p>18 have right here as Figure 5 in TexCom Exhibit No. 91,</p> <p>19 did you provide that data to TexCom or TexCom's counsel?</p> <p>20 A No. No, we just provided the analysis of the</p> <p>21 fall off.</p> <p>22 MS. MENDOZA: Your Honor, I would like to</p> <p>23 ask that TexCom be directed to provide that data to us,</p> <p>24 if it has not already been, or to identify where they</p> <p>25 have provided it. It was relied upon by this expert,</p>	<p style="text-align: right;">229</p> <p>1 JUDGE EGAN: Let me just make sure. I'm</p> <p>2 getting lost in this.</p> <p>3 So what you're saying is everything that</p> <p>4 is attached to your prefiled testimony is all that was</p> <p>5 ever provided to TexCom?</p> <p>6 WITNESS CASEY: Yes, ma'am.</p> <p>7 Q (BY MS. MENDOZA) Is there any -- so you have</p> <p>8 no, like, collection of more data points than the data</p> <p>9 points that are reflected in Figure 3 of Exhibit 91?</p> <p>10 A Figure 3. Which Figure 3 are you --</p> <p>11 Q It's on Page 24 of Exhibit 91.</p> <p>12 A Figure 3 is the injection rates.</p> <p>13 Q Okay. And I look at that, and I say, "Okay.</p> <p>14 That's data," and I could look at rate and I could look</p> <p>15 at duration and maybe I could generate this plot if I</p> <p>16 were an engineer. But I'm looking for the data that you</p> <p>17 put in to some computer program that generated for you</p> <p>18 Figure 5, because you told me that was generated by a</p> <p>19 computer program.</p> <p>20 A Correct.</p> <p>21 Q And so you had data that you put in there. Is</p> <p>22 that correct?</p> <p>23 A That's correct.</p> <p>24 Q And where in Exhibit 91 is that data?</p> <p>25 A As far as I know, it's not in there. We didn't</p>

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230	<p>1 provide them with the printout of the fall-off data. We</p> <p>2 analyzed the fall off for them and provided the report.</p> <p>3 Q So if I wanted to conduct an independent</p> <p>4 analysis of that data, I don't have what I need to do</p> <p>5 that. Is that correct?</p> <p>6 A That would be my guess, yes, ma'am.</p> <p>7 MS. MENDOZA: Your Honors, I would ask</p> <p>8 that TexCom be directed to provide us with that</p> <p>9 information or tell us that they have provided it to us.</p> <p>10 MR. RILEY: I'd be happy to do any of</p> <p>11 those things. I just don't know what I'm going to look</p> <p>12 for. But if -- the idea is that there is an instrument,</p> <p>13 is what I'm imaging, an instrument that took some data</p> <p>14 during the fall-off test; and that data set, however</p> <p>15 that's captured, is then translated into a computer</p> <p>16 program that interprets the data and generates these</p> <p>17 plots. If we have those data files, we'll provide them.</p> <p>18 We don't have them. Mr. Casey may have</p> <p>19 them. Be happy to visit with Mr. Casey, see if we has</p> <p>20 them, and provide them to counsel.</p> <p>21 JUDGE EGAN: Can you make a determination</p> <p>22 tonight whether or not those documents --</p> <p>23 MR. RILEY: As soon as I have access to</p> <p>24 Mr. Casey off the record, I will find out what we might</p> <p>25 do to provide Ms. Mendoza with what she's requesting.</p>	232	<p>1 Q (BY MS. MENDOZA) Mr. Casey, do you see your</p> <p>2 testimony where you stated in the prior hearing, "I</p> <p>3 believe there's communication at the fault located</p> <p>4 4,400 feet south of the injection site"? Do you see</p> <p>5 that?</p> <p>6 A Yes, I do.</p> <p>7 Q And did I read that correctly?</p> <p>8 A Yes, ma'am.</p> <p>9 Q And is that your -- were you there -- when you</p> <p>10 said "communication," did you mean horizontal</p> <p>11 communication?</p> <p>12 A Yes, horizontal communication.</p> <p>13 Q Thank you.</p> <p>14 When you initially modeled the -- when you</p> <p>15 initially submitted a model with your -- in your first</p> <p>16 submittal, the application that you submitted to the</p> <p>17 TCEQ, did you model it with the fault being transmissive</p> <p>18 in the horizontal or that there was horizontal</p> <p>19 communication across the fault?</p> <p>20 A Yes, we did.</p> <p>21 Q In your model that you initially submitted to</p> <p>22 the TCEQ, in your application, did -- were there -- did</p> <p>23 the pressures impact the middle Cockfield?</p> <p>24 A Yes. We showed -- since the middle's</p> <p>25 juxtaposed against the lower, we showed fluid going into</p>
231	<p>1 JUDGE EGAN: All right.</p> <p>2 MS. MENDOZA: Thank you.</p> <p>3 Q (BY MS. MENDOZA) We'll, then, go on to some</p> <p>4 other topic.</p> <p>5 You had talked before about the</p> <p>6 transmissivity of the EW-4400-S Fault, and sometimes I</p> <p>7 call that the 4400-foot fault. Do you understand when</p> <p>8 somebody says that, it's the same thing?</p> <p>9 A Yes, ma'am.</p> <p>10 Q Okay. And do you continue to believe that that</p> <p>11 fault is transmissive in the horizontal direction?</p> <p>12 A Yes, I do.</p> <p>13 Q Okay. And you believe that there is</p> <p>14 communication at that fault located 4400 feet south of</p> <p>15 the injection site. Is that correct?</p> <p>16 A Can you define "communication"?</p> <p>17 Q I will have to ask you to define communication,</p> <p>18 then, for me.</p> <p>19 I want to direct you to your testimony in</p> <p>20 the prior hearing on Page 343, Line 23.</p> <p>21 MS. MENDOZA: Your Honor, may I approach</p> <p>22 the witness?</p> <p>23 JUDGE EGAN: Yes, you may.</p> <p>24 It's Page 343. Is that correct?</p> <p>25 MS. MENDOZA: 343, Line 23.</p>	233	<p>1 the middle Cockfield.</p> <p>2 Q Do you still believe that that is going to</p> <p>3 occur?</p> <p>4 A Yes.</p> <p>5 Q You made some reference in your testimony here</p> <p>6 today, I think, to shale layers. Did you rely upon</p> <p>7 Mr. Langhus for the determination of where those shale</p> <p>8 layers are within the Cockfield Formation?</p> <p>9 MR. RILEY: Just for clarification, is</p> <p>10 counsel referring to Dr. Langhus because Mr. Langhus is</p> <p>11 not someone --</p> <p>12 MS. MENDOZA: Oh, I'm sorry, Dr. Langhus.</p> <p>13 Thank you very much.</p> <p>14 Q (BY MS. MENDOZA) Were you relying upon</p> <p>15 Dr. Langhus?</p> <p>16 A Yes, Dr. Langhus did the geology in this</p> <p>17 application.</p> <p>18 Q Do -- what did -- how thick did Dr. Langhus</p> <p>19 tell you the shale is between the middle Cockfield and</p> <p>20 the lower Cockfield?</p> <p>21 A I don't remember the exact number. Somewhere</p> <p>22 around 27, 28 feet.</p> <p>23 Q What do you believe to be the lateral extent of</p> <p>24 that shale?</p> <p>25 A You know, the shale is laterally extended</p>

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234	<p>1 across the, you know -- the area. I mean, it's, you</p> <p>2 know, of course, divided at the fault. But as we've</p> <p>3 shown in that 4400-foot fault, but it's laterally</p> <p>4 continuous.</p> <p>5 Q Do you have well borings from near the 4400</p> <p>6 fault or closer to it than your WDW315 is?</p> <p>7 A Off the top of my head, I cannot remember.</p> <p>8 Q Do you -- where is the next nearest well log</p> <p>9 that you have to WDW315 that penetrates into the lower</p> <p>10 Cockfield?</p> <p>11 A Penetrates the lower Cockfield? I couldn't</p> <p>12 tell you.</p> <p>13 Q What was the area of investigation or radius of</p> <p>14 investigation of your 2009 fall-off test?</p> <p>15 A It -- excuse me -- it calculated to 2,583 feet.</p> <p>16 Q What was the radius of investigation for</p> <p>17 your -- for the fall-off test that was conducted in</p> <p>18 1999?</p> <p>19 A I'm not sure.</p> <p>20 Q Mr. Casey, if I could have back that transcript</p> <p>21 for a minute, let me see if I can locate something for</p> <p>22 you.</p> <p>23 Mr. Casey, if I can refer you to page --</p> <p>24 the bottom of Page 361 and the top of Page 362.</p> <p>25 JUDGE WALSTON: Did you say 50 or 60?</p>	236	<p>1 time, so I wouldn't know. I mean, it's still 1500 if</p> <p>2 that's what it states it is.</p> <p>3 Q We seem to be having a difficulty here.</p> <p>4 Do you disagree today that it's 1500 feet?</p> <p>5 A No. It's 1500 feet.</p> <p>6 Q Okay. I touched on your modeling some in this</p> <p>7 case. And in this case, you used the BOAST model, is</p> <p>8 that correct, for your modeling?</p> <p>9 A Yes, ma'am.</p> <p>10 Q You believe BOAST to be a reliable model?</p> <p>11 MR. RILEY: We're talking BOAST, right,</p> <p>12 not Bost? I just want to make sure.</p> <p>13 MS. MENDOZA: I'm sorry?</p> <p>14 MR. FORSBERG: Somebody explain to her</p> <p>15 about sidebars.</p> <p>16 JUDGE EGAN: All right.</p> <p>17 MS. MENDOZA: I'm sorry. Was there an</p> <p>18 objection?</p> <p>19 JUDGE EGAN: There isn't an objection. Go</p> <p>20 ahead. It's BOAST, B-O-A-S-T 98.</p> <p>21 Q (BY MS. MENDOZA) B-O-A-S-T. Do you prefer</p> <p>22 that I spell it out or just --</p> <p>23 WITNESS CASEY: No, no.</p> <p>24 MS. MENDOZA: -- call it BOAST?</p> <p>25 MR. RILEY: BOAST model.</p>
235	<p>1 MS. MENDOZA: 361 and 362.</p> <p>2 Q (BY MS. MENDOZA) Was the radius of</p> <p>3 investigation of the original -- of the 1999 fall-off</p> <p>4 test approximately 1500 feet?</p> <p>5 A It states that it was determined to be</p> <p>6 1500 feet.</p> <p>7 Q Do you dispute that it was 1500 feet?</p> <p>8 A Well, no, ma'am. I didn't run the calculation,</p> <p>9 so...</p> <p>10 Q You submitted that fall-off test as part of</p> <p>11 your submittal to the TCEQ. Isn't that correct?</p> <p>12 A That's correct.</p> <p>13 Q Did you believe it to be incorrect when you</p> <p>14 submitted it to the TCEQ?</p> <p>15 A No, ma'am.</p> <p>16 Q Did you believe it to be correct when you</p> <p>17 submitted it to the TCEQ?</p> <p>18 A Yes, ma'am, it was correct.</p> <p>19 Q So you believed that it was correct and saying</p> <p>20 that the radius of investigation was 15 -- approximately</p> <p>21 1500 feet when you submitted it to the TCEQ. Is that</p> <p>22 correct?</p> <p>23 A That's correct.</p> <p>24 Q Do you still believe it to be 1500 feet today?</p> <p>25 A I haven't done anything with it since that</p>	237	<p>1 MS. MENDOZA: I'm sorry. I'm not</p> <p>2 familiar --</p> <p>3 JUDGE EGAN: It was a comparison to the</p> <p>4 prior person's name, prior witness's name.</p> <p>5 And is it BOAST98 model?</p> <p>6 WITNESS CASEY: I believe so. It's been a</p> <p>7 while since I've used it.</p> <p>8 Q (BY MS. MENDOZA) So you believe the BOAST</p> <p>9 model that you used in your testimony to be a reliable</p> <p>10 model. Is that correct?</p> <p>11 A Yes, ma'am.</p> <p>12 Q What porosity did you use in the most recent</p> <p>13 iteration of your BOAST model that you've attached to</p> <p>14 your prefiled testimony?</p> <p>15 A Porosity? Is that what you asked me?</p> <p>16 Q Yes.</p> <p>17 A Or permeability?</p> <p>18 Q I believe it would be porosity. Is there not a</p> <p>19 porosity factor that goes into that model?</p> <p>20 A Yes. I'm just making sure we're talking the</p> <p>21 same thing. We've been talking about permeability, so I</p> <p>22 wanted to make sure we're talking the same thing.</p> <p>23 Q I am switching to porosity here.</p> <p>24 A Okay.</p> <p>25 Q But thank you for letting me know that.</p>

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238	<p>1 So what porosity did you use in the most</p> <p>2 recent iteration of the BOAST model that you have</p> <p>3 attached to your testimony?</p> <p>4 A The porosity we used was 24 percent.</p> <p>5 Q And you used that for each one of the -- each</p> <p>6 part of your BOAST model, or did you use a different</p> <p>7 number when you approached the boundary of your BOAST</p> <p>8 model?</p> <p>9 A At the boundary, we used a different number to</p> <p>10 simulate the edge of the reservoir outside of the grid</p> <p>11 pattern.</p> <p>12 Q You, in fact, used a porosity of 340 percent</p> <p>13 for your last grid. Correct?</p> <p>14 A Off the top of my head, I'm not sure.</p> <p>15 Q Do you think it was close to 340 percent?</p> <p>16 A It sounds about right. I honestly don't have</p> <p>17 the modeling files in front of me to be able to tell you</p> <p>18 a hundred percent sure, but it sounds correct.</p> <p>19 Q Did you actually run the modeling that you have</p> <p>20 submitted here?</p> <p>21 A No. I had my Ph.D. modeling engineer run the</p> <p>22 model for me.</p> <p>23 Q And you provided him with all of the inputs</p> <p>24 that he put into that model?</p> <p>25 A Yes, I did.</p>	240	<p>1 of options to simulate the aquifer that's beyond your</p> <p>2 grid system.</p> <p>3 MR. RILEY: I apologize. Could we have a</p> <p>4 moment just so we can get our copy in front of us?</p> <p>5 It'll take a second. Thank you.</p> <p>6 JUDGE EGAN: Yes.</p> <p>7 Ms. Mendoza, do you know about how much</p> <p>8 longer you'll be because we're at the hour.</p> <p>9 MS. MENDOZA: I probably have a fair</p> <p>10 amount more to go. I have no objection to interrupting</p> <p>11 my exam and picking it up tomorrow, if that's your</p> <p>12 preference.</p> <p>13 JUDGE EGAN: If you're not going to finish</p> <p>14 tonight, it would probably be good to let everybody go</p> <p>15 home and get a little break before tomorrow morning.</p> <p>16 MS. MENDOZA: I just don't know the custom</p> <p>17 from the past hearing on how long we ran in the</p> <p>18 evenings, but I'm happy to accommodate whatever the --</p> <p>19 JUDGE EGAN: We were in Conroe, and I</p> <p>20 don't remember. It was a while ago.</p> <p>21 MR. RILEY: We have a new member. We can</p> <p>22 establish new customs now that we are here.</p> <p>23 JUDGE EGAN: However, since that time, my</p> <p>24 endurance level has dropped substantially, so --</p> <p>25 MR. RILEY: Let's break.</p>
239	<p>1 Q Okay. So you would have provided him with the</p> <p>2 24 percent porosity?</p> <p>3 A Yes, ma'am.</p> <p>4 Q You would have provided him with the boundary</p> <p>5 condition porosity that you've used?</p> <p>6 A The boundary condition was -- excuse me -- the</p> <p>7 boundary condition was part of the modeling that he put</p> <p>8 together for me.</p> <p>9 Q So he came up with the boundary condition?</p> <p>10 A It's a standard way that we've been modeling</p> <p>11 injection wells for years using the BOAST program.</p> <p>12 Q Mr. Casey, I wanted to call your attention to a</p> <p>13 portion of the application that was originally submitted</p> <p>14 to the TCEQ. It's TexCom Exhibit 6. It starts at</p> <p>15 Page 239, and I want to make sure that I understood that</p> <p>16 this is more or less sort of the instructions for the</p> <p>17 BOAST model.</p> <p>18 MS. MENDOZA: So if I may approach the</p> <p>19 witness and show him this?</p> <p>20 JUDGE EGAN: Yes, you may.</p> <p>21 Q (BY MS. MENDOZA) Mr. Casey, can you identify</p> <p>22 what starts on Page 239 of TexCom Exhibit 6?</p> <p>23 A It's the -- I guess you say the operations</p> <p>24 manual for the BOAST program.</p> <p>25 Q When I looked around Page 262, I see a variety</p>	241	<p>1 JUDGE EGAN: If it's okay with everybody,</p> <p>2 we'll adjourn tonight at 5:00, and we'll probably plan</p> <p>3 on adjourning every night at close to 5:00 unless we're</p> <p>4 close to finishing a witness. And we will begin</p> <p>5 tomorrow morning at 9:00.</p> <p>6 Mr. Riley, if you can, before the end of</p> <p>7 this hearing, get us a copy of that equation.</p> <p>8 MR. RILEY: Yes, ma'am.</p> <p>9 JUDGE EGAN: The page that that equation</p> <p>10 is on.</p> <p>11 MR. RILEY: Yes, ma'am. Since the witness</p> <p>12 referred to it, would it be okay if I just got a copy of</p> <p>13 the page that he wrote down? So that's what he's using,</p> <p>14 apparently.</p> <p>15 JUDGE EGAN: Whatever that is, just so</p> <p>16 everybody has it in their -- in the record --</p> <p>17 MR. RILEY: Yes, ma'am, I can do that.</p> <p>18 JUDGE EGAN: -- in the record copy of the</p> <p>19 exhibits.</p> <p>20 And also, I believe you've agreed to get</p> <p>21 with Mr. Casey regarding the backup for Figure 5 in</p> <p>22 Exhibit 91 that is on Page 25.</p> <p>23 MR. RILEY: Yes, ma'am.</p> <p>24 JUDGE EGAN: And to let Ms. Mendoza know</p> <p>25 in the morning if those documents still exist, and if</p>

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1 so, how soon she can expect to see them.

2 MR. RILEY: Yes, ma'am.

3 JUDGE EGAN: Is there anything else we
4 need to address before we adjourn this evening?

5 MR. HILL: Just for clarification, Your
6 Honors, how late or early in the day tomorrow can we
7 expect to go? From nine o'clock until is it noon?

8 JUDGE EGAN: Tomorrow is the unusual day.
9 What time do --

10 MR. RILEY: The unusual day.

11 JUDGE EGAN: -- you need to leave?

12 MR. RILEY: I would like to leave -- well,
13 the realty is, I'll leave as soon as it's appropriate
14 for me to leave. But at least at noon, if we're even in
15 the middle of Mr. Casey or continuing with Mr. Casey, I
16 will need to go, and so noon is the hour.

17 MR. HILL: So the expectation is that we
18 will adjourn at that time? Is that --

19 MR. RILEY: That's my --

20 JUDGE WALSTON: I guess your question is,
21 do you need to bring your witness?

22 MR. HILL: Well, my witness is here, but I
23 am --

24 JUDGE WALSTON: Okay.

25 MR. HILL: -- trying to conceive of what

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1 to expect tomorrow.

2 JUDGE EGAN: I would like for the parties
3 to confer and identify what witnesses each night they
4 will need the following day so that we don't have
5 experts that are just sitting here waiting --

6 MR. RILEY: That would be great.

7 JUDGE EGAN: -- when there's no way we
8 could possibly reach them. So since -- tomorrow, when
9 we finish with Mr. Casey, we'll just be finished. How
10 will that be? That way you don't have to have your
11 witness come. And if we finish early, we will begin
12 with Lone Star the following day.

13 MR. HILL: Okay. Thank you.

14 MS. GOSS: Judge Egan, would you please
15 clarify one more time what -- when we're going to be
16 submitting the briefs on the -- is that Monday morning?

17 JUDGE EGAN: Yes.

18 MR. RILEY: Monday morning.

19 MS. GOSS: Thank you.

20 JUDGE EGAN: The parties are allowed to
21 submit their briefing on Monday morning.

22 MR. RILEY: Thank you, Judges. I
23 appreciate it.

24 JUDGE EGAN: We're off the record.

25 (Proceedings recessed at 5:05 p.m.)

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